2026

LOCAL GUIDELINES

FOR IMPLEMENTING THE

CALIFORNIA ENVIRONMENTAL QUALITY ACT

FOR

SANTA CLARITA VALLEY WATER AGENCY

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LOCAL GUIDELINES
FOR IMPLEMENTING THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT

(2026)

1. GENERAL PROVISIONS, PURPOSE AND POLICY.

1.01 GENERAL PROVISIONS.

These Local Guidelines ("Local Guidelines") are to assist the Santa Clarita Valley Water Agency ("Agency") in implementing the provisions of the California Environmental Quality Act ("CEQA"). These Local Guidelines are consistent with the Guidelines for the Implementation of CEQA ("State CEQA Guidelines"), which have been promulgated by the California Natural Resources Agency for the guidance of state and local agencies in California. These Local Guidelines have been adopted pursuant to California Public Resources Code section 21082.

1.02 PURPOSE.

The purpose of these Local Guidelines is to help the Agency accomplish the following basic objectives of CEQA:

(a) To enhance and provide long-term protection for the environment, while providing a decent home and satisfying living environment for every Californian;
(b) To provide information to governmental decision-makers and the public regarding the potential significant environmental effects of the proposed project;
(c) To provide an analysis of the environmental effects of future actions associated with the project to adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project;
(d) To identify ways that environmental damage can be avoided or significantly reduced;
(e) To prevent significant avoidable environmental damage through utilization of feasible project alternatives or mitigation measures; and
(f) To disclose and demonstrate to the public the reasons why a governmental agency approved the project in the manner chosen. Public participation is an essential part of the CEQA process. Each public agency should encourage wide public involvement, formal and informal, in order to receive and evaluate public reactions to environmental issues related to a public agency's activities. Such involvement should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

1.03 APPLICABILITY.

These Local Guidelines apply to any activity that constitutes a "project," as defined in Local Guidelines Section 11.59, for which the Agency is the Lead Agency or a Responsible Agency. These Local Guidelines are also intended to assist the Agency in determining whether a

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proposed activity constitutes a project that is subject to CEQA review, or whether the activity is exempt from CEQA.

1.04 REDUCING DELAY AND PAPERWORK.

The State CEQA Guidelines encourage local governmental agencies to reduce delay and paperwork by, among other things:

(a) Integrating the CEQA process into early planning review; to this end, the project approval process and these procedures, to the maximum extent feasible, are to run concurrently, not consecutively;
(b) Identifying projects which fit within categorical or other exemptions and are therefore exempt from CEQA processing;
(c) Using initial studies to identify significant environmental issues and to narrow the scope of Environmental Impact Reports (EIRs);
(d) Using a Negative Declaration when a project, not otherwise exempt, will not have a significant effect on the environment;
(e) Consulting with state and local responsible agencies before and during the preparation of an EIR so that the document will meet the needs of all the agencies which will use it;
(f) Allowing applicants to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a Negative Declaration rather than an EIR;
(g) Integrating CEQA requirements with other environmental review and consultation requirements;
(h) Emphasizing consultation before an EIR is prepared, rather than submitting adverse comments on a completed document;
(i) Combining environmental documents with other documents, such as general plans;
(j) Eliminating repetitive discussions of the same issues by using EIRs on programs, policies or plans and tiering from statements of broad scope to those of narrower scope;
(k) Reducing the length of EIRs by means such as setting appropriate page limits;
(l) Preparing analytic, rather than encyclopedic, EIRs;
(m) Mentioning insignificant issues only briefly;
(n) Writing EIRs in plain language;
(o) Following a clear format for EIRs;
(p) Emphasizing the portions of the EIR that are useful to decision-makers and the public and reducing emphasis on background material;
(q) Incorporating information by reference; and
(r) Making comments on EIRs as specific as possible.

1.05 COMPLIANCE WITH STATE LAW.

These Local Guidelines are intended to implement the provisions of CEQA and the State CEQA Guidelines, and the provisions of CEQA and the State CEQA Guidelines shall be fully complied with even though they may not be set forth or referred to herein.

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1.06 TERMINOLOGY.

The terms "must" or "shall" identify mandatory requirements. The terms "may" and "should" are permissive, with the particular decision being left to the discretion of the Agency.

1.07 PARTIAL INVALIDITY.

In the event any part or provision of these Local Guidelines shall be determined to be invalid, the remaining portions that can be separated from the invalid unenforceable provisions shall continue in full force and effect.

1.08 ELECTRONIC DELIVERY OF COMMENTS AND NOTICES.

Individuals may file a written request to receive copies of public notices provided for under these Local Guidelines or the State CEQA Guidelines. The requestor may elect to receive these notices via email rather than regular mail. Notices sent by email are deemed delivered when the staff person sending the email sends it to the last email address provided by the requestor to the Agency. Any request to receive public notices shall be in writing and shall be renewed annually.

Individuals may also submit comments on the CEQA documentation for a project via email. Comments submitted via email shall be treated as written comments for all purposes. Comments sent to the Agency via email are deemed received when they actually arrive in an email account of a staff person who has been designated or identified as the point of contact for a particular project.

The Agency must also post certain environmental documents (such as Draft and Final Environmental Impact Reports, Draft Negative Declarations, and Draft Mitigated Negative Declarations) and CEQA notices (such as Notices of Preparation, Notices of Availability, Notices of Intent to Adopt a Negative Declaration, Notices of Exemption, and Notices of Determination) on its website, if any.

(Reference: Pub. Resources Code, §§ 21082.1, 21091(d)(3), 21092.2.)

1.09 THE AGENCY MAY CHARGE REASONABLE FEES FOR REPRODUCING ENVIRONMENTAL DOCUMENTS.

A public agency may charge and collect a reasonable fee from members of the public that request a copy of an environmental document, so long as the fee does not exceed the cost of reproduction. The kinds of "environmental documents" that CEQA specifically allows public agencies to seek reimbursement for include: initial studies, negative declarations, mitigated negative declarations, draft and final EIRs, and documents prepared as a substitute for an EIR, negative declaration, or mitigated negative declaration.

The Agency shall make CEQA-related documents (e.g., Negative Declarations, Mitigated Negative Declarations, Draft EIRs, Final EIRs, and notices relating to these documents) available to the public-at-large on its website. Requests for documents made pursuant to the California Public Records Act must comply with the Government Code. (See, for example, Government Code section 7922.570 for information regarding providing documents in electronic format.)

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1.10 TIME OF PREPARATION

Before granting any approval of a non-exempt project subject to CEQA, the Lead Agency or Responsible Agency shall consider either (1) a Final EIR, (2) a Negative Declaration, (3) a Mitigated Negative Declaration, or (4) another document authorized by the State CEQA Guidelines to be used in the place of an EIR or Negative Declaration (e.g., an Addendum, a Supplemental EIR, a Subsequent EIR, etc.).

Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs, Negative Declarations, and Mitigated Negative Declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

To implement the above principles, the Agency shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, the Agency shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the Agency has made any final purchase of the site for these facilities, except that the Agency may designate a preferred site for CEQA review and may enter into land acquisition agreements when the Agency has conditioned its future use of the site on CEQA compliance.

(B) Otherwise take any action that gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

With private projects, the Agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

While mere interest in, or inclination to support, a project does not constitute approval, a public agency entering into preliminary agreements regarding a project prior to approval shall not, as a practical matter, commit the agency to the project. For example, the Agency shall not grant any vested development entitlements prior to compliance with CEQA. Further, any such pre-approval agreement should, for example:

(A) Condition the agreement on compliance with CEQA;
(B) Not bind any party, or commit any party, to a definite course of action prior to CEQA compliance;

(C) Not restrict the Lead Agency from considering any feasible mitigation measures and alternatives, including the "no project" alternative; and

(D) Not restrict the Lead Agency from denying the project.

The Agency's environmental document preparation and review should be coordinated in a timely fashion with the Agency's existing planning, review, and project approval processes. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively.

(See State CEQA Guidelines, § 15004; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.)

1.11 STATE AGENCY FURLOUGHS.

Due to budget concerns, the State may institute mandatory furlough days for state government agencies. Local agencies may also change their operating hours.

Because state and local agencies may enact furloughs that limit their operating hours, if the Agency has time-sensitive materials or needs to consult with a state agency, the Agency should check with the applicable state agency office or with the Agency's attorney to ensure compliance with all applicable deadlines.

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2. LEAD AND RESPONSIBLE AGENCIES

2.01 LEAD AGENCY PRINCIPLE.

The Agency will be the Lead Agency if it will have principal responsibility for carrying out or approving a project. Where a project is to be carried out or approved by more than one public agency, only one agency shall be responsible for the preparation of environmental documents. This agency shall be called the Lead Agency.

(Reference: State CEQA Guidelines, §§ 15050, 15367.)

2.02 SELECTION OF LEAD AGENCY.

Where two or more public agencies will be involved with a project, the Lead Agency shall be designated according to the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project will be located within the jurisdiction of another public agency; or

(b) If the project will be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising and approving the project as a whole.

The Lead Agency will normally be the agency with general governmental powers, rather than an agency with a single or limited purpose. (For example, a district that will provide a public service or utility to the project serves a limited purpose.) If two or more agencies meet this criteria equally, the agency that acts first on the project will normally be the Lead Agency.

If two or more public agencies have a substantial claim to be the Lead Agency under either (a) or (b), they may designate one agency as the Lead Agency by agreement. An agreement may also provide for cooperative efforts by contract, joint exercise of powers, or similar devices. If the agencies cannot agree which agency should be the Lead Agency for preparing the environmental document, any of the disputing public agencies or the project applicant may submit the dispute to the Office of Land Use and Climate Innovation ("LCI"), formerly Office of Planning and Research. Within 21 days of receiving the request, LCI will designate the Lead Agency. LCI shall not designate a Lead Agency in the absence of a dispute. A "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists when each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

(Reference: State CEQA Guidelines, § 15051.)

2.03 DUTIES OF A LEAD AGENCY.

As a Lead Agency, the Agency shall decide whether a Negative Declaration, Mitigated Negative Declaration or an EIR will be required for a project and shall prepare, or cause to be prepared, and consider the document before making its decision on whether and how to approve the project. The documents may be prepared by Staff or by private consultants pursuant to a

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contract with the Agency. However, the Agency shall independently review and analyze all draft and final EIRs or Negative Declarations prepared for a project and shall find that the EIR or Negative Declaration reflects the independent judgment of the Agency prior to approval of the document. If a Draft EIR or Final EIR is prepared under a contract with the Agency, the contract must be executed within forty-five (45) days from the date on which the Agency sends a Notice of Preparation. The Agency, however, may take longer to execute the contract if the project applicant and the Agency mutually agree to an extension of the 45-day time period. (Pub. Resources Code, § 21151.5; see also Local Guidelines Section 7.02.)

During the process of preparing an EIR, the Agency, as Lead Agency, shall have the following duties:

(a) If a California Native American tribe has requested consultation, within 14 days after determining that an application for a project is complete or a decision to undertake a project, the Agency shall begin consultation with the California Native American tribes (see Local Guidelines Section 7.07);

(b) Immediately after deciding that an EIR is required for a project, the Agency shall send to the Office of Land Use and Climate Innovation and each Responsible Agency a Notice of Preparation (Form "G") stating that an EIR will be prepared (see Local Guidelines Section 7.03);

(c) Prior to release of an EIR, if the California Native American tribe that is culturally affiliated with the geographic area of a project requests in writing to be informed of any proposed project, the Agency shall begin consultation with the tribe consistent with California law and Local Guidelines Section 7.07;

(d) The Agency shall prepare or cause to be prepared the Draft EIR for the project (see Local Guidelines Sections 7.06 and 7.18);

(e) Once the Draft EIR is completed, the Agency shall file a Notice of Completion (Form "H") with the Office of Land Use and Climate Innovation (see Local Guidelines Section 7.25);

(f) The Agency shall consult with state, federal and local agencies that exercise authority over resources that may be affected by the project for their comments on the completed Draft EIR (see, e.g., Local Guidelines Sections 5.02, 5.16, Section 7.26);

(g) The Agency shall provide public notice of the availability of a Draft EIR (Form "K") at the same time that it sends a Notice of Completion to the Office of Land Use and Climate Innovation (see Local Guidelines Section 7.25);

(h) The Agency shall evaluate comments on environmental issues received from persons who reviewed the Draft EIR and shall prepare or cause to be prepared a written response to all comments that raise significant environmental issues and that were timely received during the public comment period. A written response must be provided to all public agencies who commented on the project during the public review period at least ten (10) days prior to certifying an EIR (see Local Guidelines Section 7.30);

(i) The Agency shall prepare or cause to be prepared a Final EIR before approving the project (see Local Guidelines Section 7.31);

(j) The Agency shall certify that the Final EIR has been completed in compliance with CEQA and has been reviewed by the Board of Directors (see Local Guidelines Section 7.33); and

(k) The Agency shall include in the Final EIR any comments received from a Responsible Agency on the Notice of Preparation or the Draft EIR (see Local Guidelines Sections 2.08, 7.30 and 7.31).

2.04 CEQA DETERMINATIONS MADE BY NON-ELECTED BODY; PROCEDURE TO APPEAL SUCH DETERMINATIONS.

As Lead Agency, the Agency may charge a non-elected decisionmaking body with the responsibility of making a finding of exemption or adopting, certifying or authorizing environmental documents. Any such determination, however, shall be subject to the Agency's procedures allowing for the appeal of the CEQA determination of any non-elected body to the Agency's Board of Directors. In the absence of a procedure governing such appeal, any CEQA determination made by a non-elected decisionmaker shall be appealable to the Agency's Board of Directors within ten (10) days of the non-elected decisionmaker's determination. If the non-elected decisionmaker's CEQA determination is not timely appealed as set forth herein, the non-elected decisionmaker's determination shall be final.

In the event the Agency's Board of Directors has delegated authority to a subsidiary board or official to approve a project, the Agency's Board of Directors also hereby delegates to that subsidiary board or official the authority to make all necessary CEQA determinations, including whether an EIR, Negative Declaration, Mitigated Negative Declaration or exemption shall be required for any project. A subsidiary board or official's CEQA determination shall be subject to appeal as set forth above.

(Reference: State CEQA Guidelines, §§ 15061(e), 15074(f), 15090(b).)

2.05 PROJECTS RELATING TO DEVELOPMENT OF HAZARDOUS WASTE AND OTHER SITES.

An applicant for a development project must submit a signed statement to the Agency, as Lead Agency, stating whether the project and any alternatives are located on a site that is included in any list compiled by the Secretary for Environmental Protection of the California Environmental Protection Agency ("California EPA") listing hazardous waste sites and other specified sites located in the Agency's boundaries. The applicant's statement must contain the following information:

(a) The applicant's name, address, and phone number;
(b) Address of site, and local agency (city/county);
(c) Assessor's book, page, and parcel number; and
(d) The list which includes the site, identification number, and date of list.

Before accepting as complete an application for any development project as defined in Local Guidelines Section 11.16, the Agency, as Lead Agency, shall consult lists compiled by the Secretary for Environmental Protection of the California EPA pursuant to Government Code section 65962.5 listing hazardous waste sites and other specified sites located in the Agency's boundaries. When acting as Lead Agency, the Agency shall notify an applicant for a development project if the project site is located on such a list and not already identified. In the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (see Local Guidelines Section 6.04) or the Notice of Preparation of Draft EIR (see Local Guidelines Section 7.03), the Agency shall specify the California EPA list, if any, that includes the project site, and shall provide the information contained in the applicant's statement.

(Reference: Gov. Code, § 65962.5.)

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2.06 RESPONSIBLE AGENCY PRINCIPLE.

When a project is to be carried out or approved by more than one public agency, all public agencies other than the Lead Agency that have discretionary approval power over the project shall be identified as Responsible Agencies.

(Reference: State CEQA Guidelines, § 15381.)

2.07 DUTIES OF A RESPONSIBLE AGENCY.

When it is identified as a Responsible Agency, the Agency shall consider the environmental documents prepared or caused to be prepared by the Lead Agency and reach its own conclusions on whether and how to approve the project involved. The Agency shall also both respond to consultation and attend meetings as requested by the Lead Agency to assist the Lead Agency in preparing adequate environmental documents. The Agency should also review and comment on Draft EIRs, Negative Declarations, and Mitigated Negative Declarations. Comments shall be limited to those project activities that are within the Agency's area of expertise or are required to be carried out or approved by the Agency or are subject to the Agency's powers.

As a Responsible Agency, the Agency may identify significant environmental effects of a project for which mitigation is necessary. As a Responsible Agency, the Agency may submit to the Lead Agency proposed mitigation measures that would address those significant environmental effects. If mitigation measures are required, the Agency should submit to the Lead Agency complete and detailed performance objectives for such mitigation measures that would address the significant environmental effects identified, or refer the Lead Agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the Lead Agency by the Agency, when acting as a Responsible Agency, shall be limited to measures that mitigate impacts to resources that are within the Agency's authority. For private projects, the Agency, as a Responsible Agency, may require the project proponent to provide such information as may be required and to reimburse the Agency for all costs incurred by it in reporting to the Lead Agency.

(Reference: State CEQA Guidelines, § 15096.)

2.08 RESPONSE TO NOTICE OF PREPARATION BY RESPONSIBLE AGENCIES.

Within thirty (30) days of receipt of a Notice of Preparation of an EIR, the Agency, as a Responsible Agency, shall specify to the Lead Agency the scope and content of the environmental information related to the Agency's area of statutory responsibility in connection with the proposed project. At a minimum, the response shall identify the significant environmental issues and possible alternatives and mitigation that the Agency, as a Responsible Agency, will need to have explored in the Draft EIR. Such information shall be specified in writing, shall be as specific as possible, and shall be communicated to the Lead Agency, by certified mail, email, or any other method of transmittal that provides it with a record that the response was received. The Lead Agency shall incorporate this information into the EIR.

(Reference: Pub. Resources Code, § 21080.4; State CEQA Guidelines, § 15103.)

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2.09 USE OF FINAL EIR OR NEGATIVE DECLARATION BY RESPONSIBLE AGENCIES.

The Agency, as a Responsible Agency, shall consider the Lead Agency's Final EIR or Negative Declaration before acting upon or approving a proposed project. As a Responsible Agency, the Agency must independently review and consider the adequacy of the Lead Agency's environmental documents prior to approving any portion of the proposed project. In certain instances, the Agency, in its role as a Responsible Agency, may require that a Subsequent EIR or a Supplemental EIR be prepared to fully address those aspects of the project over which the Agency has approval authority. Mitigation measures and alternatives deemed feasible and relevant to the Agency's role in carrying out the project shall be adopted. Findings that are relevant to the Agency's role as a Responsible Agency shall be made. After the Agency decides to approve or carry out part of a project for which an EIR or negative declaration has previously been prepared by the Lead Agency, the Agency, as Responsible Agency, should file a Notice of Determination with the County Clerk within five (5) days of approval, but need not state that the Lead Agency's EIR or Negative Declaration complies with CEQA. The Agency, as Responsible Agency, should state that it considered the EIR or Negative Declaration as prepared by a Lead Agency.

(Reference: State CEQA Guidelines, § 15096.)

2.10 SHIFT IN LEAD AGENCY RESPONSIBILITIES.

The Agency, as a Responsible Agency, shall assume the role of the Lead Agency if any one of the following three conditions is met:

(a) The Lead Agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency;

(b) The Lead Agency prepared environmental documents for the project, and all of the following conditions apply:

  (1) A Subsequent or Supplemental EIR is required;

  (2) The Lead Agency has granted a final approval for the project; and

  (3) The statute of limitations has expired for a challenge to the action of the appropriate Lead Agency; or

(c) The Lead Agency prepared inadequate environmental documents without providing public notice of a Negative Declaration or sending Notice of Preparation of an EIR to Responsible Agencies and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(Reference: State CEQA Guidelines, § 15052.)

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3. ACTIVITIES EXEMPT FROM CEQA

3.01 ACTIONS SUBJECT TO CEQA.

CEQA applies to discretionary projects proposed to be carried out or approved by public agencies such as the Agency. If the proposed activity does not come within the definition of "project" contained in Local Guidelines Section 11.59, it is not subject to environmental review under CEQA.

The term "project," as defined by CEQA, does not include:

(a) Proposals for legislation to be enacted by the State Legislature;
(b) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, and general policy and procedure making (except as provided in Local Guidelines Section 11.59;
(c) The submittal of proposals to a vote of the people in response to a petition drive initiated by voters, or the enactment of a qualified voter-sponsored initiative under California Constitution Art. II, Section 11(a) and Election Code section 9214;
(d) The creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to any specific project that may have a potentially significant physical impact on the environment. Government funding mechanisms may include, but are not limited to, assessment districts and community facilities districts;
(e) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment; and
(f) Activities that do not result in a direct or reasonably foreseeable indirect physical change in the environment.

(Reference: State CEQA Guidelines, §§ 15060(c), 15378.)

3.02 MINISTERIAL ACTIONS.

Ministerial actions are not subject to CEQA review. A ministerial action is one that is approved or denied by a decision that a public official or a public agency makes that involves only the use of fixed standards or objective measurements without personal judgment or discretion.

When a project involves an approval that contains elements of both a ministerial and discretionary nature, the project will be deemed to be discretionary and subject to the requirements of CEQA. The decision whether the approval of a proposed project or activity is ministerial in nature may involve or require, to some extent, interpretation of the language of the legal mandate, and should be made on a case-by-case basis. The following is a non-exclusive list of examples of ministerial activities:

(a) Issuance of business licenses;
(b) Approval of final subdivision maps and final parcel maps;
(c) Approval of individual utility service connections and disconnections;
(d) Issuance of licenses;
(e) Issuance of a permit to do street work;

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(f) Issuance of building permits where the Lead Agency does not retain significant discretionary power to modify or shape the project; and

(g) Until January 1, 2024, approval of an application to install an emergency standby generator to serve a macro cell tower where conditions set forth in Government Code section 65850.75 are met.

(Reference: State CEQA Guidelines, § 15268.)

3.03 EXEMPTIONS IN GENERAL.

CEQA and the State CEQA Guidelines exempt certain activities and provide that local agencies should further identify and describe certain exemptions. The requirements of CEQA and the obligation to prepare an EIR, Negative Declaration, or Mitigated Negative Declaration generally do not apply to the exempt activities that are set forth in CEQA, the State CEQA Guidelines, and Chapter 3 of these Local Guidelines.

(Reference: State CEQA Guidelines, §§ 15260 – 15332.)

3.04 NOTICE OF EXEMPTION.

After approval of an exempt project, a "Notice of Exemption" (Form "A") may be filed by the Agency or its representatives with the County Clerk of each county in which the activity will be located. The Notice of Exemption must be filed electronically with the County Clerk if that option is offered by the County Clerk. When the Lead Agency files a Notice of Exemption with the County Clerk, it must also file the Notice of Exemption with the State Clearinghouse via the Office of Land Use and Climate Innovation's CEQASubmit portal at https://ceqasubmit.lci.ca.gov/. After filing, the Agency must additionally post the Notice of Exemption on the Agency's website, if any. The Agency is generally not required to file a Notice of Exemption after approving a project that it finds exempt from CEQA, though there are circumstances where a Notice of Exemption must be filed. Please see Local Guidelines Section 3.12 for certain circumstances in which the Lead Agency is required to file a Notice of Exemption.

The filing of a Notice of Exemption, when appropriate, is recommended for Agency actions because it shortens the statute of limitations to challenge the Agency's exemption determination under CEQA from 180 days to 35 days. The County Clerk must post a Notice of Exemption within twenty-four (24) hours of receipt, and the Notice must remain posted for thirty (30) days. The 30-day posting requirement excludes the first day of posting and includes the last day of posting. On the 30th day, the Notice of Exemption must be posted for the entire day. Although no California Department of Fish and Wildlife ("DFW") filing fee is applicable to exempt projects, most counties customarily charge a documentary handling fee to pay for record keeping on behalf of the DFW. Refer to the Index in the County Clerk Memo to determine if such a fee will be required for the project.

The Notice of Exemption must, among other things, identify the person undertaking the project, including any person undertaking an activity that receives financial assistance from the Agency as part of the project or the person receiving a lease, permit, license, certificate, or other entitlement for use from the Agency as part of the project. Certain counties require the name and address of an applicant to be included in the "Project Applicant" box of the Notice of Exemption,

even when the only project proponent is the Agency; in these counties, if the Agency is the only project proponent, the Agency's name and address should be provided in the "Project Applicant" box of the Notice of Exemption. Check the county's requirements before submitting the Notice of Exemption for filing and posting.

The Notice of Exemption may be filed by the project applicant, rather than the Lead Agency, in certain circumstances. Specifically, the Lead Agency may direct the project applicant to file the Notice of Exemption where the activity that the Lead Agency has determined is exempt from CEQA either:

(a) is undertaken by a *person* (not a public agency) and is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or

(b) involves the issuance to a *person* (not a public agency) of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(See Pub. Resources Code, §§ 21065, (b), (c), 21152). Where the Notice of Exemption is filed by a project applicant rather than the Lead Agency, the applicant must attach a Certificate of Determination to the Notice of Exemption to be filed. The Certificate of Determination may be in the form of a certified copy of an existing document or record of the Lead Agency. Alternatively, the Lead Agency may prepare a Certificate of Determination (see Form "B") stating that the activity is exempt from CEQA, and the Lead Agency may provide the Certificate of Determination to the applicant. The applicant must attach the Certificate of Determination to the Notice of Exemption to be filed.

(Reference: Pub. Resources Code, § 21152; State CEQA Guidelines, § 15062.)

3.05 DISAPPROVED PROJECTS.

CEQA does not apply to projects that the Lead Agency rejects or disapproves. Even if a project for which an EIR, Negative Declaration, or Mitigated Negative Declaration has been prepared is ultimately disapproved, the project applicant shall not be relieved of its obligation to pay the costs incurred to prepare the EIR, Negative Declaration, or Mitigated Negative Declaration for the project.

(Reference: State CEQA Guidelines, §§ 15061(b)(4), 15270.)

3.06 PROJECTS WITH NO POSSIBILITY OF SIGNIFICANT EFFECT.

Where it can be seen with absolute certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA.

(Reference: State CEQA Guidelines, § 15061(b)(3).)

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3.07 EMERGENCY PROJECTS.

The following types of emergency projects are exempt from CEQA (the term "emergency" is defined in Local Guidelines Section 11.20):

(a) Work in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter a historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of the Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare. Emergency repairs include those that require a reasonable amount of planning to address an anticipated emergency.

(c) Projects necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety, or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. Highway shall have the same meaning as defined in Section 360 of the Vehicle Code. This exemption does not apply to highways designated as official state scenic highways, nor to any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(e) Seismic work on highways and bridges pursuant to Streets and Highways Code section 180.2.

(Reference: State CEQA Guidelines, § 15269.)

3.08 FEASIBILITY AND PLANNING STUDIES.

A project that involves only feasibility or planning studies for possible future actions which the Agency has not yet approved, adopted, or funded is exempt from CEQA.

(Reference: State CEQA Guidelines, § 15262.)

3.09 RATES, TOLLS, FARES, AND CHARGES.

The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by the Agency that the Agency finds are for one or more of the purposes listed below are exempt from CEQA.

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(a) Meeting operating expenses, including employee wage rates and fringe benefits;
(b) Purchasing or leasing supplies, equipment or materials;
(c) Meeting financial reserve needs and requirements; or
(d) Obtaining funds for capital projects necessary to maintain service within existing service areas.

When the Agency determines that one of the aforementioned activities pertaining to rates, tolls, fares, or charges is exempt from the requirements of CEQA, it shall incorporate written findings setting forth the specific basis for the claim of exemption in the record of any proceeding in which such an exemption is claimed.

(Reference: State CEQA Guidelines, § 15273.)

3.10 PIPELINES WITHIN A PUBLIC RIGHT-OF-WAY AND LESS THAN ONE MILE IN LENGTH.

Projects that are for the installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline and that are:

(a) in a public street or highway or any other public right-of-way; and
(b) less than one mile in length

shall be exempt from CEQA requirements.

"Pipeline" includes subsurface facilities but does not include any surface facility related to the operation of the underground facility.

(Reference: Public Resources Code, § 21080.21.)

3.11 PIPELINES OF LESS THAN EIGHT MILES IN LENGTH.

Projects that are for the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline, or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline shall be exempt from CEQA requirements if all of the following conditions are met:

(a) The project is less than eight miles in length.
(b) Notwithstanding the project length, actual construction and excavation activities undertaken to achieve the maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline are not undertaken over a length of more than one-half mile at any one time.
(c) The project consists of a section of pipeline that is not less than eight miles from any section of pipeline that has been subject to an exemption pursuant to CEQA in the past 12 months.
(d) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials, and, to the extent not otherwise expressly required by law, the party undertaking the project immediately informs the lead agency of the discovery of contaminated soil.

(e) To the extent not otherwise expressly required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if determined to be necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project.

(f) Project activities are undertaken within an existing right-of-way and the right-of-way is restored to its condition prior to the project.

(g) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and to otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

If a project meets all of the requirements for this exemption, the person undertaking the project shall do all of the following:

(a) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority of this exemption.

(b) Provide notice to the public in the affected area in a manner consistent with paragraph (3) of Public Resources Code section 21092(b).

(c) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.

(d) Comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

This exemption does not apply to a project in which the diameter of the pipeline is increased or to a project undertaken within the boundaries of an oil refinery.

For purposes of this exemption, the following definitions apply:

(a) "Pipeline" includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in the state. "Pipeline" does not include the following:

    (1) An interstate pipeline subject to Part 195 of Title 49 of the Code of Federal Regulations.

(2) A pipeline for the transportation of a hazardous liquid substance in a gaseous state.
(3) A pipeline for the transportation of crude oil that operates by gravity or at a stress level of 20 percent or less of the specified minimum yield strength of the pipe.
(4) Transportation of petroleum in onshore gathering lines located in rural areas.
(5) A pipeline for the transportation of a hazardous liquid substance offshore located upstream from the outlet flange of each facility on the Outer Continental Shelf where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream.
(6) Transportation of a hazardous liquid by a flow line.
(7) A pipeline for the transportation of a hazardous liquid substance through an onshore production, refining, or manufacturing facility, including a storage or in plant piping system associated with that facility.
(8) Transportation of a hazardous liquid substance by vessel, aircraft, tank truck, tank car, or other vehicle or terminal facilities used exclusively to transfer hazardous liquids between those modes of transportation.

(Reference: State CEQA Guidelines, § 15284.)

3.12 CERTAIN RESIDENTIAL HOUSING PROJECTS.

CEQA does not apply to the construction, conversion, or use of residential housing if the project meets all of the general requirements described in Section A below and satisfies the specific requirements for any one of the following three categories: (1) agricultural housing (Section B below), (2) affordable housing projects in urbanized areas (Section C below), or (3) affordable housing projects near major transit stops (Section D below).

A. General Requirements. The construction, conversion, or use of residential housing units affordable to low-income households (as defined in Local Guidelines Section 11.36) located on an infill site in an urbanized area is exempt from CEQA if all of the following general requirements are satisfied:

(1) The project is consistent with:

(a) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application was deemed complete; and
(b) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete. However, the project may be inconsistent with zoning if the zoning is inconsistent with the general plan and the project site has not been rezoned to conform to the general plan;

(2) Community level environmental review has been adopted or certified;

(3) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees;

(4) The project site meets all of the following four criteria relating to biological resources:

(a) The project site does not contain wetlands;
(b) The project site does not have any value as a wildlife habitat;
(c) The project does not harm any species protected by the federal Endangered Species Act of 1973, the Native Plant Protection Act, or the California Endangered Species Act; and
(d) The project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete;

(5) The site is not included on any list of facilities and sites compiled pursuant to Government Code section 65962.5;

(6) The project site is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps must have been taken in response to the results of this assessment:

(a) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements; or
(b) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements;

(7) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code (see Local Guidelines Section 11.28);

(8) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection; unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard;

(9) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties;

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(10) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency;

(11) Either the project site is not within a delineated earthquake fault zone, or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard;

(12) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood;

(13) The project site is not located on developed open space;

(14) The project site is not located within the boundaries of a state conservancy;

(15) The project site has not been divided into smaller projects to qualify for one or more of the exemptions for affordable housing, agricultural housing, or residential infill housing projects found in the subsequent sections; and

(16) The project meets the requirements set forth in either Public Resources Code sections 21159.22, 21159.23 or 21159.24.

(Reference: State CEQA Guidelines, § 15192.)

B. Specific Requirements for Agricultural Housing. CEQA does not apply to the construction, conversion, or use of residential housing for agricultural employees that meets either of the following:

(1) The project meets all of the general requirements described above in Section A and meets the following additional criteria:

(a) The project either:

1. Is affordable to lower income households, lacks public financial assistance, and the developer has provided sufficient legal commitments to ensure the continued availability and use of the housing units for lower income households for a period of at least fifteen (15) years; or

2. If public financial assistance exists for the project, then the project must be housing for very low-, low-, or moderate-income households and the developer of the project has provided sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of

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the housing units for low- and moderate-income households for a period of at least fifteen (15) years;

(b) The project site is adjacent on at least two sides to land that has been developed and the project consists of not more than forty-five (45) units or provides dormitories, barracks, or other group-living facilities for a total of forty-five (45) or fewer agricultural employees, and either:

1. The project site is within incorporated city limits or within a census-defined place with a minimum population density of at least five thousand (5,000) persons per square mile; or

2. The project site is within incorporated city limits or within a census-defined place and the minimum population density of the census-defined place is at least one thousand (1,000) persons per square mile, unless the Lead Agency determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative effects of successive projects of the same type in the same area would, over time, be significant;

(c) If the project is located on a site zoned for general agricultural use, it must consist of twenty (20) or fewer units, or, if the housing consists of dormitories, barracks, or other group-living facilities, the project must not provide housing for more than twenty (20) agricultural employees; and

(d) The project is not more than two (2) acres in area if the project site is located in an area with a population density of at least one thousand (1,000) persons per square mile, and is not more than five (5) acres in area for all other project sites.

(2) If the project does not meet the general requirements described above in Section A, but still meets the criteria described above in Section B(1) in accordance with Public Resources Code section 21159.22, and the following:

(a) Project is an agricultural housing development that satisfies all of the following:

1. Agricultural employee housing does not contain dormitory-style housing;

2. Development consists of no more than either (i) thirty-six units or spaces designed for use by a single family or household, or (ii) one hundred fifty units or spaces designed

for use by a single family or household if development is located in Counties of Fresno, Madera, Merced, Santa Clara, or Santa Cruz;

3. Housing must be maintained and operated by a qualified affordable housing organization that has been certified pursuant to Health and Safety Code section 17030.10, and provide for onsite management of development; and development proponent shall submit proof of issuance of qualified affordable housing organization's certification by enforcement agency; or if the housing is maintained and operated by local public housing agency or multicounty, state, or multistate agency that has been certified as qualified affordable housing organization, that agency either directly maintains and operates the housing or contracts with another qualified housing organization, and the local government must ensure an affordability covenant is recorded on the property for not less than 55 years, and the housing is not eligible for state funding pursuant to Public Resources Code sections 50205(b)(1) or 50517.10(b)(1); and

4. Funded by either: (i) the Joe Serna, Jr. Farmworker Housing Grant Program; (ii) the Office of Migrant Services with the Department of Housing and Community Development; (iii) local government; or (iv) owned or operated and funded by a public or nonprofit entity, or that receives state, federal, or local public funding.

(3) Project consists exclusively of the repair or maintenance of an existing farmworker housing project.

(Reference: Pub. Resources Code, §§ 21084, 21080.44, 21159.22; State CEQA Guidelines, §§ 15192, 15193.)

C. Specific Requirements for Affordable Housing Projects in Urbanized Areas. CEQA does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of one hundred (100) or fewer units that are affordable to low-income households if all of the general requirements described in Section A above are satisfied and the following additional criteria are also met:

(1) The developer of the project provides sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least thirty (30) years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code;

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(2) The project site meets one of the following conditions:

(a) Has been previously developed for qualified urban uses;
(b) Is immediately adjacent to parcels that are developed with qualified urban uses; or
(c) At least 75% of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25% of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, the site has not been developed for urban uses and no parcel within the site has been created within ten (10) years prior to the proposed development of the site;

(3) The project site is not more than five (5) acres in area; and

(4) The project site meets one of the following requirements regarding population density:

(a) The project site is within an urbanized area or within a census-defined place with a population density of at least five thousand (5,000) persons per square mile;
(b) If the project consists of fifty (50) or fewer units, the project site is within an incorporated city with a population density of at least twenty-five hundred (2,500) persons per square mile and a total population of at least twenty-five thousand (25,000) persons; or
(c) The project site is within either an incorporated city or a census-defined place with a population density of one thousand (1,000) persons per square mile, unless there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(Reference: Pub. Resources Code, §§ 21083, 21159.23; State CEQA Guidelines, § 15194.)

D. Specific Requirements for Affordable Housing Projects Near Major Transit Stops.

(a) Except as provided in subdivision (b), CEQA does not apply to a project if all of the following criteria are met:

1. The project is a residential project on an infill site.

2. The project is located within an urbanized area.

3. The project satisfies the criteria of Public Resources Code section 21159.21, described in Section A above.

4. Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.

5. The site of the project is not more than four acres in total area.

6. The project does not contain more than 100 residential units.

7. Either of the following criteria (subdivision a or subdivision b) are met:

   a. (1) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income; and

      (2) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low-, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of the subdivision (h) of Section 65589.5 of the Government Code.

   b. The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph 7.a above.

8. The project is within one-half mile of a major transit stop.

9. The project does not include any single level building that exceeds 100,000 square feet.

10. The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a) above, the Exemption for Affordable Housing Projects near Major Transit Stops does not apply if any one of the following criteria is met:

1. There is a reasonable possibility that the project-specific, significant effect on the environment due to unusual circumstances;

2. Substantial changes have occurred since community-level environmental review was adopted or certified with respect to the circumstances under which the project is being undertaken, and those changes are related to the project; or
3. New information regarding the circumstances under which the project is being undertaken has become available, and that new information is related to the project and was not known and could not have been known at the time of the community-level environmental review.

(c) If a project satisfies the criteria described above in Section 3.12D(a), but is not exempt from CEQA as a result of satisfying the criteria described in Section 3.12D(b), the analysis of the environmental effects of the project in the EIR or the negative declaration for the project shall be limited to an analysis of the project-specific effects of the project and any effects identified pursuant to Paragraph 2 or 3 of Section 3.12D(b), above.

(Reference: Pub. Resources Code, §§ 21083, 21159.24; State CEQA Guidelines, § 15195.)

E. Whenever the Lead Agency determines that a project is exempt from environmental review based on Public Resources Code sections 21159.22 [Section 3.12B of these Local Guidelines], 21159.23 [Section 3.12C of these Local Guidelines], or 21159.24 [Section 3.12D of these Local Guidelines], Staff and/or the proponent of the project shall file a Notice of Exemption with the Office of Land Use and Climate Innovation within five (5) working days after the approval of the project.

(Reference: State CEQA Guidelines, § 15196.)

3.13 MINOR ALTERATIONS TO FLUORIDATE WATER UTILITIES.

Minor alterations to water utilities made for the purpose of complying with the fluoridation requirements of Health and Safety Code sections 116410 and 116415 or regulations adopted thereunder are exempt from CEQA.

(Reference: State CEQA Guidelines, § 15282(m).)

3.14 BALLOT MEASURES.

The definition of project in the State CEQA Guidelines specifically excludes the submittal of proposals to a vote of the people of the state or of a particular community. This exemption does not apply to the public agency that sponsors the initiative. When a governing body makes a decision to put a measure on the ballot, that decision may be discretionary and therefore subject to CEQA. In contrast, the enactment of a qualified voter-sponsored initiative under California Constitution Art. II, Section 11(a) and Election Code section 9214 is not a project and therefore is not subject to CEQA review.

(Reference: Local Guidelines Section 3.01; State CEQA Guidelines, § 15378(b)(3).)

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3.15 TRANSIT PRIORITY PROJECT.

Exemption: Transit Priority Projects (see Local Guidelines Section 11.77) that are consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a Sustainable Community Strategy or an alternative planning strategy may be exempt from CEQA. To qualify for the exemption, the decision-making body must hold a hearing and make findings that the project meets all of Public Resources Code section 21155.1's environmental, housing, and public safety conditions and requirements.

Streamlined Review: A Transit Priority Project that has incorporated all feasible mitigation measures, performance standards or criteria set forth in a prior environmental impact report, may be eligible for streamlined environmental review. For a complete description of the requirements for this streamlined review see Public Resources Code section 21155.2. Similarly, the environmental review for a residential or mixed use residential project may limit, or entirely omit, its discussion of growth-inducing impacts or impacts from traffic on global warming under certain limited circumstances. Note, however, that impacts from other sources of greenhouse gas emissions would still need to be analyzed. For complete requirements see Public Resources Code section 21159.28.

Note that neither the exemption nor the streamlined review will apply until: (1) the applicable Metropolitan Planning Organization prepares and adopts a Sustainable Communities Strategy or alternative planning strategy for the region; and (2) the California Air Resources Board has accepted the Metropolitan Planning Organization's determination that the Sustainable Communities Strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets adopted for the region.

(Reference: Pub. Resources Code, §§ 21155.1, 21151.2, 21159.28.)

3.16 CERTAIN INFILL PROJECTS

(a) (1) If an environmental impact report was certified for a planning level decision of the city or county, the application of CEQA to the approval of an infill project shall be limited to the effects on the environment that (A) are specific to the project or to the project site and were not addressed as significant effects in the prior environmental impact report or (B) substantial new information shows the effects will be more significant than described in the prior environmental impact report. The attached Form "S" shall be used for this determination. A lead agency's determination pursuant to this section shall be supported by substantial evidence.

(2) An effect of a project upon the environment shall not be considered a specific effect of the project or a significant effect that was not considered significant in a prior environmental impact report, or an effect that is more significant than was described in the prior environmental impact report if uniformly applicable development policies or standards adopted by the city, county, or the lead agency, would apply to the project and the lead agency makes a finding, based upon substantial evidence, that the development policies or standards will substantially mitigate that effect.

(b) If an infill project would result in significant effects that are specific to the project or the project site, or if the significant effects of the infill project were not addressed in the prior

environmental impact report, or are more significant than the effects addressed in the prior environmental impact report, and if a mitigated negative declaration or a sustainable communities environmental assessment could not be otherwise adopted, an environmental impact report prepared for the project analyzing those effects shall be limited as follows:

(1) Alternative locations, densities, and building intensities to the project need not be considered.

(2) Growth inducing impacts of the project need not be considered.

(c) This section applies to an infill project that satisfies both of the following:

(1) The project satisfies any of the following:

A) 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 emission reduction targets.

(B) Consists of a small walkable community project located in an area designated by a city for that purpose.

(C) Is located within the boundaries of a metropolitan planning organization that has not yet adopted a sustainable communities strategy or alternative planning strategy, and the project has a residential density of at least 20 units per acre or a floor area ratio of at least 0.75.

(2) Satisfies all applicable statewide performance standards contained in the guidelines adopted pursuant to Public Resources Code section 21094.5.5 (Form "R").

(d) This section applies after the Secretary of the Natural Resources Agency adopts and certifies the guidelines establishing statewide standards pursuant to Public Resources Code section 21094.5.5.

(e) For the purposes of this section, the following terms mean the following:

(1) "Infill project" means a project that meets the following conditions:

(A) Consists of any one, or combination, of the following uses:

(i) Residential.

(ii) Retail or commercial, where no more than one-half of the project area is used for parking.

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(iii) A transit station.

(iv) A school.

(v) A public office building.

(B) Is located within an urban area on a site 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.

(2) "Planning level decision" means the enactment or amendment of a general plan, community plan, specific plan, or zoning code.

(3) "Prior environmental impact report" means the environmental impact report certified for a planning level decision, as supplemented by any subsequent or supplemental environmental impact reports, negative declarations, or addenda to those documents.

(4) "Small walkable community project" means a project that is in an incorporated city, which is not within the boundary of a metropolitan planning organization and that satisfies the following requirements:

(A) Has a project area of approximately one-quarter mile diameter of contiguous land completely within the existing incorporated boundaries of the city.

(B) Has a project area that includes a residential area adjacent to a retail downtown area.

(C) The project has a density of at least eight dwelling units per acre or a floor area ratio for retail or commercial use of not less than 0.50.

(5) "Urban area" includes either an incorporated city or an unincorporated area that is completely surrounded by one or more incorporated cities that meets both of the following criteria:

(A) The population of the unincorporated area and the population of the surrounding incorporated cities equal a population of 100,000 or more.

(B) The population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.

(Reference: Pub. Resources Code, § 21094.5.)

3.17 EXEMPTION FOR RESIDENTIAL OR MIXED-USE HOUSING PROJECTS

CEQA does not apply to residential or mixed-used housing projects, located in unincorporated areas of a county, that meet the requirements set forth below. For purposes of this section, "residential or mixed-use housing project" means a project consisting of multifamily residential

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uses only or a mix of multifamily residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

This exemption shall apply to a residential or mixed-use housing project if all of the following conditions are met:

(1) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.

(2) (A)The public agency approving or carrying out the project determines, based upon substantial evidence, that the density of the residential portion of the project is not less than the greater of the following:

a. The average density of the residential properties that adjoin, or are separated only by an improved public right-of-way from, the perimeter of the project site, if any.

b. The average density of the residential properties within 1,500 feet of the project site.

c. Six dwelling units per acre.

(B) The residential portion of the project is a multifamily housing development that contains six or more residential units.

(3) The proposed development occurs within an unincorporated area of a county on a project site of no more than five acres substantially surrounded by qualified urban uses. "Substantially surrounded" means (1) at least 75 percent of the perimeter of the project site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses; and (2) the remainder of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that have been designated for qualified urban uses in a zoning, community plan, or general plan for which an environmental impact report was certified.

(4) The project site has no value as habitat for endangered, rare, or threatened species.

(5) Approval of the project would not result in any significant effects relating to transportation, noise, air quality, greenhouse gas emissions, or water quality.

(6) The site can be adequately served by all required utilities and public services.

(7) The project is located on a site that is a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

The exemption does not apply to the project if any of the following conditions exist: (1) the cumulative impact of successive projects of the same type in the same place over time is significant; (2) there is a reasonable possibility that the project will have a significant effect on the

environment due to unusual circumstances; (3) the project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway; (4) the project is located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code; (5) the project may cause a substantial adverse change in the significance of a historical resource; or (6) the project may cause a substantial adverse impact to tribal cultural resources.

If the lead agency determines that a project is not subject to this division pursuant to this section and it determines to approve or carry out the project, the lead agency shall file a notice of exemption with the Office of Land Use and Climate Innovation and with the county clerk in the county in which the project will be located.

This section shall remain in effect only until January 1, 2032, and as of that date is repealed.

(Reference: Pub. Resources Code, § 21159.25.)

3.18 EXEMPTION FOR INFILL PROJECTS IN TRANSIT PRIORITY AREAS

A residential or mixed-use project, or a project with a floor area ratio of at least 0.75 on commercially-zoned property, including any required subdivision or zoning approvals, is exempt from CEQA if the project satisfies the following criteria:

- The project is located within a transit priority area as defined in Section 11.74 below;
- The project is consistent with an applicable specific plan for which an environmental impact report was certified; and
- 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 has accepted the determination that the sustainable communities strategy or the alternative planning strategy would achieve the applicable greenhouse gas emissions reduction targets.

Further environmental review shall be required for a project meeting the above criteria only if one of the events specified in Section 8.04 below occurs.

(Reference: State CEQA Guidelines, § 15182(b).)

3.19 EXEMPTION FOR RESIDENTIAL PROJECTS UNDERTAKEN PURSUANT TO A SPECIFIC PLAN

Where a public agency has prepared an EIR for a specific plan after January 1, 1980, a residential project undertaken pursuant to and in conformity with that specific plan is generally exempt from CEQA. Residential projects covered by this section include, but are not limited to, land subdivisions, zoning changes, and residential planned unit developments.

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Further environmental review shall be required for a project meeting the above criteria only if, after the adoption of the specific plan, one of the events specified in Section 8.04 below occurs. In that circumstance, this exemption shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the Lead Agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(Reference: State CEQA Guidelines, § 15182(c).)

3.20 EXEMPTION FOR CERTAIN HOUSING DEVELOPMENT PROJECTS THAT ARE 20 ACRES OR LESS IN SIZE

CEQA does not apply to a housing development project, including any permits, approvals, or public improvements required for the housing development project, if the housing development project meets all of the following conditions:

1) Is not more than 20 acres or, for a builder's remedy project, be no more than four acres;

2) Is located in an incorporated city or urban area, and either previously developed or surrounded by urban uses;

3) Is generally consistent with applicable general plan and zoning ordinances, as well as any applicable specific plan and local coastal program;

4) Meets minimum residential density requirements of five units per acre in unincorporated nonmetropolitan counties, 10 units per acre in suburban jurisdictions, or 15 units per acre in metropolitan jurisdictions;

5) Does not require demolition of a historic structure and avoid hazardous sites and sensitive lands (e.g., prime farmland, wetlands, etc.);

6) Does not include any transient lodging (e.g., hotel, motel, or bed and breakfast inn);

7) Within either (i) 14 days of the preliminary project application being deemed complete or if no preliminary application was submitted, then the project application being deemed complete, or (ii) for projects whose applications were deemed complete before July 1, 2026, within 14 days of notifying the lead agency the project is eligible for this exemption, the lead agency shall provide formal notification via certified mail and email to each California Native American tribe that is traditionally and culturally affiliated with the project site as an invitation to consult on the proposed project, its location, and the project's potential effects on tribal cultural resources;

8) Include any mitigation for tribal cultural resources as a result of consultation with any California Native American tribe traditionally and culturally affiliated with the project site;

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9) Include a condition of approval requiring an environmental assessment for hazardous substance releases, with mitigation requirements based upon results;

10) Comply with specific environmental hazard and air filtration standards if within 500 feet of a freeway; and

11) Comply with labor requirements, including payment of prevailing wage for 100 perfect affordable projects and use of a skilled and trained workforce for buildings exceeding 85 feet in height.

(Reference: Pub. Resources Code, § 21080.66.)

3.21 TRANSFER OF LAND FOR THE PRESERVATION OF NATURAL CONDITIONS

CEQA does not apply to the acquisition, sale, or other transfer of interest in land by the Agency for the purpose of fulfilling any of the following purposes: (1) preservation of natural conditions existing at the time of transfer, including plant and animal habitats, (2) restoration of natural conditions, including plant and animal habitats, (3) continuing agricultural use of the land; (4) prevention of encroachment of development into flood plains; (5) preservation of historical resources; or (6) preservation of open space or lands for park purposes. CEQA similarly does not apply to the granting or acceptance of funding by the Agency for the foregoing purposes.

The foregoing applies even if physical changes to the environment or changes in the use of the land are a reasonably foreseeable consequence of the acquisition, sale, or other transfer of the interests in land, or of the granting or acceptance of funding, provided that environmental review otherwise required by CEQA occurs before any project approval that would authorize physical changes being made to that land.

The Agency must file a Notice of Exemption with the State Clearinghouse and the County Clerk should it find a project exempt under this provision.

(Reference: Pub. Resources Code, § 21080.28.)

3.22 TRANSIT PRIORITIZATION PROJECTS.

CEQA exempts the following projects when (i) the project is carried out by a local agency that is the lead agency for the project; (ii) the project does not induce single-occupancy vehicle trips, add additional highway lanes, widen highways, or add physical infrastructure or striping to highways except for minor modifications needed for efficient and safe movement of transit vehicles, bicycles, or high-occupancy vehicles, such as extended merging lanes, shoulder improvements, or improvements to the roadway within the existing right of way; (iii) the project does not include the addition of any auxiliary lanes; and (iv) the construction of the project shall not require the demolition of affordable housing units:

(1) Pedestrian and bicycle facilities—including bicycle parking, bicycle sharing facilities, and bikeways as defined in Section 890.4 of the Streets and Highways Code—that improve safety, access, or mobility, including new facilities, within the public right-of-way;

(2) Projects that improve customer information and wayfinding for transit riders, bicyclists, or pedestrians within the public right-of-way;

(3) Transit prioritization projects, which are defined to mean any of the following transit project types on highways or in the public right-of-way:

(a) Signal and sign changes, such as signal coordination, signal timing modifications, signal modifications, or the installation of traffic signs or new signals;

(b) The installation of wayside technology and onboard technology;

(c) The installation of ramp meters;

(d) The conversion to dedicated transit lanes, including transit queue jump or bypass lanes, shared turning lanes and turn restrictions, the narrowing of lanes to allow for dedicated transit lanes or transit reliability improvements, or the widening of existing transit travel lanes by removing or restricting street parking; and

(e) Transit stop access and safety improvements, including, but not limited to, the installation of transit bulbs and the installation of transit boarding islands.

(4) A project for the designation and conversion of general purpose lanes to high-occupancy vehicle lanes or bus-only lanes, or highway shoulders to part-time transit lanes, for use either during peak congestion hours or all day on highways with existing public transit service or where a public transit agency will be implementing public transit service as identified in a short range transit plan.

(5) A project for the protection, improvement, institution, or increase of microtransit, paratransit, shuttle, bus, ferry, bus rapid transit, or light rail service, including the protection, maintenance, construction, operation, or rehabilitation of stops, stations, terminals, or existing operations facilities, which will be exclusively used by zero-emission, near-zero-emission, low oxide of nitrogen engine, compressed natural gas fuel, fuel cell, or hybrid powertrain vehicles, rail or cable cars, rolling stock, or vessels. The project shall be located entirely within an existing public right-of-way or existing highway right-of-way, whether or not the right-of-way is in use for rail or public mass transit and is wholly within the boundaries of an urbanized area or urban cluster. Until January 1, 2032, a project for the protection, improvement, institution, or increase of certain transit services, including the protection, maintenance, construction, operation, or rehabilitation of stops, stations, terminals, or existing operations facilities, if used primarily by near-zero-emission and other alternative fuels.

(6) A project for the institution or increase of bus rapid transit, bus, or light rail service, including the construction or rehabilitation of stations, terminals, or existing operations facilities, which will be exclusively used by zero-emission, near-zero

emission, low oxide of nitrogen engine, compressed natural gas fuel, fuel cell, or hybrid powertrain buses or light rail vehicles, on existing public rights-of-way or existing highway rights-of-way, whether or not the right-of-way is in use for public mass transit. The project shall be located on a site that is wholly within the boundaries of an urbanized area or urban cluster, as designated by the United State Census Bureau.

(7) Until January 1, 2040, a public project for the institution or increase of passenger rail service, other than light rail service eligible under paragraph (5), including the construction or rehabilitation of stations, terminals, or existing operations facilities, which will be exclusively used by zero-emission trains. The project shall be located entirely within an existing rail right-of-way or existing highway right-of-way, whether or not the right-of-way is in use for passenger rail transit.

(8) A project to construct or maintain infrastructure to charge or refuel zero-emission transit buses, provided the project is carried out by a public transit agency that is subject to, and in compliance with, the State Air Resources Board's Innovative Clean Transit regulations (Article 4.3 (commencing with Section 2023) of Chapter 1 of Division 3 of Title 13 of the California Code of Regulations) and the project is located on property owned by the transit agency or within an existing public right-of-way.

A lead agency applying an exemption pursuant to this paragraph for hydrogen refueling infrastructure or facilities necessary to refuel or maintain zero-emission public transit buses, trains, or ferries shall hold a noticed public hearing and give notice of the meeting consistent with Public Resources Code section 21080.25(b)(6)(B).

(9) The maintenance, repair, relocation, replacement, or removal of any utility infrastructure associated with a project identified in paragraphs (1) to (6), inclusive.

(10) A project that consists exclusively of a combination of any of the components of a project identified in paragraphs (1) to (7), inclusive.

(11) A planning decision carried out by a local agency to reduce or eliminate minimum parking requirements or institute parking maximums, remove or restrict parking, or implement transportation demand management requirements or programs.

Additional conditions apply to a project otherwise exempt under this section if the project exceeds fifty hundred million dollars ($50,000,000), as set forth in Public Resources Code section 21080.25(d)-(e).

Moreover, a project exempt under this section may be subject to certain labor requirements, including that the project be completed by a skilled and trained workforce, as set forth in Public Resources Code section 21080.25(f).

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If the Agency determines that a project is not subject to CEQA pursuant to this section and approves that project, the Agency must file a Notice of Exemption with both the Office of Land Use and Climate Innovation and the County Clerk of the county in which the project is located.

This exemption specifically covering transportation-related projects, such as pedestrian and bicycle facilities, transit prioritization projects, public projects located in an urbanized area or urban cluster, and public projects for the construction or maintenance of infrastructure of facilities to charge, refuel or maintain zero-emission public transit, shall remain in effect only until January 1, 2040, and as of that date it will be repealed.

(Reference: Pub. Resources Code, § 21080.25.)

3.23 TRANSPORTATION PLANS, PEDESTRIAN PLANS, AND BICYCLE TRANSPORTATION PLANS.

CEQA does not apply to an active transportation plan, a pedestrian plan, or a bicycle transportation plan for restriping of streets and highways, bicycle parking and storage, signal timing to improve street and highway intersection operations, the related signage for bicycles, pedestrians, and vehicles, a transit comprehensive operational analysis, transit route readjustment, or other transit agency route addition, elimination, or modification. An active transportation plan or pedestrian plan is encouraged to include the consideration of environmental factors, but that consideration does not inhibit or preclude the application of this section.

An individual project that is part of an active transportation plan or pedestrian plan remains subject to CEQA unless another exemption applies to that project.

Before determining that a project is exempt pursuant to this section, the Lead Agency must hold noticed public hearings in areas affected by the project to hear and respond to public comments. Publication of the notice must comply with Government Code section 6061 and be in a newspaper of general circulation in the area affected by the proposed project.

If the Agency determines that a project is not subject to CEQA pursuant to this section and approves that project, the Agency must file a Notice of Exemption with both the Office of Land Use and Climate Innovation and the County Clerk of the county in which the project is located.

For purposes of this section, the following definitions apply:

(1) "Active transportation plan" means a plan developed by a local jurisdiction that promotes and encourages people to choose walking, bicycling, or rolling through the creation of safe, comfortable, connected, and accessible walking, bicycling, or rolling networks, and encourages alternatives to single-occupancy vehicle trips.

(2) "Pedestrian plan" means a plan developed by a local jurisdiction that establishes a comprehensive, coordinated approach to improving pedestrian infrastructure and safety.

(3) "Transit Comprehensive Operational Analysis" means a plan that redesigns or modifies a transit operator's or local agency's public transit service network, including the routing of fixed route and microtransit services.

(Reference: Pub. Resources Code, § 21080.20.)

3.24 FACILITIES SUPPORTING HIGH-SPEED RAIL

CEQA does not apply to a project that consists of the development, construction, or operation of a heavy maintenance facility for electrically powered high-speed rail if the following conditions are met:

(1) The project was previously evaluated in a project-level EIR that evaluated one or more similar high-speed rail maintenance facility sites

(2) The project incorporates all applicable mitigation measures identified in the prior EIR

(3) The Project site is located within one mile of a rail right-of-way approved for high-speed rail service

CEQA also does not apply to a project that consists of the development, construction, or modification of a proposed passenger rail station, or design changes to a passenger rail station, for the purpose of serving electrically powered high-speed rail, if both of the following conditions are met:

(1) The station or station design change is located within an area previously reviewed in a certified EIR

(2) The project incorporates all applicable mitigation measures identified in the previous EIR

(Reference: Pub. Resources Code, § 21080.70.)

3.25 CERTAIN PUBLIC PARK AND TRAIL PROJECTS

CEQA does not apply to any activity or approval necessary for or incidental to planning, design, site acquisition, construction, operation, or maintenance of public park or nonmotorized recreational trail facilities funded in whole or in part by the Safe Drinking Water, Wildfire Prevent, Drought Preparedness, and Clear Air Bond Act of 2024.

(Reference: Pub. Resources Code, § 21080.57.)

3.26 WATER SYSTEM WELLS AND DOMESTIC WELL PROJECTS

CEQA does not apply to the construction, maintenance, repair, or replacement of a well or a domestic well that meets all of the following conditions:

(1) The domestic well or water system to which the well is connected has been designated by the State Water Resources Control Board ("State Board") as high risk or medium risk in the State Board's drinking water needs assessment;

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(2) The well project is designed to mitigate or prevent a failure of the well or the domestic well that would leave residents that rely on the well, the water system to which the well is connected, or the domestic well without an adequate supply of safe drinking water;

(3) The lead agency determines all of the following:

(a) The well project is not designed primarily to serve irrigation or future growth.

(b) The well project does not affect wetlands or sensitive habitats.

(c) Unusual circumstances do not exist that would cause the well project to have a significant effect on the environment.

(d) The well project is not located on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(e) The well project does not have the potential to cause a substantial adverse change in the significance of a historical resource.

(f) The well project's construction impacts are fully mitigated consistent with applicable law.

(g) The cumulative impact of successive reasonably anticipated projects of the same type as the well project, in the same place, over time, is not significant.

Before determining that a well project is exempt pursuant to this section, a lead agency must contact the State Board to determine whether claiming the exemption under this section will affect the ability of the well project to receive federal financial assistance or federally capitalized financial assistance.

A lead agency that determines that a well project is exempt under this section must file a notice of exemption with both the Office of Land Use and Climate Innovation and the County Clerk. The notice of exemption must explain whether the project is additionally exempt from CEQA under Public Resources Code section 21080 (e.g., whether it is a ministerial project, an emergency repair necessary to maintain service, or an action necessary to prevent or mitigate an emergency), Public Resources Code section 21080.47 (see Section 3.27 of these Local Guidelines, below), or under the Class 1 (Existing Facilities) or Class 2 (Replacement or Reconstruction) categorical exemptions (see Section 3.38 of these Local Guidelines, below). If none of the exemptions referenced in this paragraph apply to a project that is otherwise exempt under this section, the notice of exemption must explain why the exemptions referenced in this paragraph do not apply to the project.

For purposes of this section, the following definitions apply:

A "well" is defined as a wellhead that provides drinking water to a "water system."

A "domestic well" is defined as a groundwater well used to supply water for the domestic needs of an individual residence or a water system that is not a public water system and that has no more than four service connections.

A "water system" is defined to mean a "public water system" as that term is defined in Health and Safety Code section 116275(h) (i.e., a system for the provision of water for human consumption through pipes or other constructed conveyances that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year), a "state small water system" as that term is defined in Health and Safety Code section 116275(n) (i.e., a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year), or a tribal water system.

(Pub. Resources Code, § 21080.31 [in effect until January 1, 2028].)

3.27 ROUTINE MAINTENANCE OF STORMWATER FACILITIES

CEQA does not apply to routine maintenance of public stormwater facilities that are fully concrete or have a conveyance capacity of less than a 100-year storm event if all of the following conditions are met:

(1) The project does not increase the designed conveyance capacity of the stormwater facility.

(2) The project is undertaken or approved by a public agency that has adopted, by ordinance, procedures that apply to the project to minimize the impacts of construction equipment, debris, sediment, and other pollutants.

(3) The project is not likely to result in adverse impacts to tribal cultural resources.

Under this bill, if a nonelected decision making body of a city with a population of at least 1,000,000 determines that such a routine maintenance project is exempt from CEQA, that determination may not be appealed to the agency's elected decision making body.

This section will remain in effect until January 1, 2030, and as of that date, is repealed.

(Reference: Pub. Resources Code, § 21080.61.)

3.28 SMALL DISADVANTAGED COMMUNITY WATER SYSTEM AND STATE SMALL WATER SYSTEM.

CEQA does not apply to certain water infrastructure projects that primarily benefit a "small disadvantaged community water system" or a "state small water system," as these terms are defined in Public Resources Code section 21080.47. If certain labor requirements and other conditions are met as set forth in Public Resources Code section 21080.47, the installation, repair, or construction of the following for the benefit of a small disadvantaged community water system or state small water system is exempt from CEQA:

(1) Drinking water groundwater wells with a maximum flow rate of up to 250 gallons per minute;

(2) Drinking water treatment facilities with a footprint of less than 2,500 square feet that are not located in an environmentally sensitive area;

(3) Drinking water storage tanks with a capacity of up to 250,000 gallons;

(4) Booster pumps and hydropneumatic tanks;

(5) Pipelines of less than one mile in length in a road right-of-way or up to seven miles in length in a road right-of-way when the project is required to address threatened or current drinking water violations;

(6) Water services lines; and

(7) Minor drinking water system appurtenances, including, but not limited to, system and service meters, fire hydrants, water quality sampling stations, valves, air releases and vacuum break valves, emergency generators, backflow prevention devices, and appurtenance enclosures.

(Reference: Pub. Resources Code, § 21080.47.)

3.29 STATE FUNDED COMMUNITY WATER SYSTEMS

CEQA does not apply to a project, defined in Public Resources Code section 21080.47, that is a community water system that is funded pursuant to the Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clean Air Bond Act of 2024 or the State Water Resources Control Board's Safe and Affordable Funding for Equity and Resilience program that does not otherwise include any construction activities if the project does both of the following:

(1) Results in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery.

(2) Includes procedures and ongoing management for the protection of the environment.

(Reference: Pub. Resources Code, § 21080.48.)

3.30 WILDFIRE RISK REDUCTION PROJECTS

CEQA does not apply to the following wildfire risk reduction projects:

(1) Projects consisting of a prescribed fire or fuel reduction to reduce wildfire risk by reestablishing the fire return interval appropriate to the ecosystem for biodiversity or other benefits, excluding projects located on coastal sage scrub habitat or any other sensitive habitat. In order to qualify, all of the following requirements must be met:

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a. The project shall not exceed 50 contiguous acres and shall be located within one-half mile of a subdivision of 30 or more dwelling units.

b. The lead agency shall consult with the Department of Fish and Wildlife to avoid or minimize, to the extent feasible, impacts to candidate, rare, threatened, endangered plants and wildlife along with wildlife nursery sites

c. The lead agency shall, to the extent feasible, design the project to avoid impacts to riparian areas and water quality through use of sediment and erosion control measures

d. The lead agency shall identify and, to the extent feasible, protect tribal cultural resources that may be impacted by the project.

(2) Projects consisting of "defensible space" fire clearance of up to 100 feet, as measured from the center line of the roadway, for a public roadway identified as an egress and evacuation route for a subdivision or community of 30 or more dwelling units, to remove flammable vegetation or trees of less than 12 inches in diameter as measured at chest height.

(3) Projects consisting of the establishment or enhancement of residential home hardening or defensible space for wildfire risk reduction within 200 feet of a legal structure located in a high or very high wildfire hazard zone.

(4) Projects consisting of a fuel break that extends up to 200 feet from structures, including the clearance of flammable vegetation and trees less than 12 inches in diameter as measured at chest height.

(Reference: Pub. Resources Code, § 21080.49.)

3.31 WILDFIRE DEFENSIBLE SPACE REQUIREMENTS

CEQA does not apply to ordinances, designed by a local agency responsible for fire protection, designating defensible space requirements based on regulations promulgated by the State Board of Forestry and Fire Protection.

In developing the ordinance, a local agency may, in order to meet the intent of the State Board of Forestry and Fire Protection regulations, consider local variations in local fire hazards, geography, development, and other conditions and authorize alternative practices to those in the State Board of Forestry and Fire Protection regulations, if the alternative practices provide for substantially similar practical effects as those stated in the State Board of Forestry and Fire Protection regulations. This subdivision does not preclude a local agency from adopting an ordinance designating defensible space requirements that are more stringent than the regulations adopted by the State Board of Forestry and Fire Protection.

(Reference: Government Code, §§ 51182(f)(1), 51182.4.)

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3.32 CONSERVATION AND RESTORATION OF CALIFORNIA NATIVE FISH AND WILDLIFE.

(a) CEQA does not apply to a project that is exclusively one of the following (though a project may exclusively be one of the following even if it has incidental public benefits, such as public access or recreation) and meets the criteria set forth in subdivision (b) of this section:

(1) A project to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend.

(2) A project to restore or provide habitat for California native fish and wildlife.

(b) This section does not apply to a project unless the project does both of the following:

(1) Results in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery; and

(2) Includes procedures and ongoing management for the protection of the environment.

(c) This section does not apply to a project that includes construction activities, except for construction activities solely related to habitat restoration.

(d) The lead agency shall obtain the concurrence of the Director of Fish and Wildlife for the determinations required pursuant to subdivisions (a) through (c) above.

(e) Within 48 hours of making a determination that a project is exempt pursuant to this section, the lead agency shall file a Notice of Exemption with the Office of Land Use and Climate Innovation, and the Department of Fish and Wildlife must post the concurrence of the Director of Fish and Wildlife on the department's website.

This exemption is in effect until January 1, 2030. (Pub. Resources Code, § 21080.56.)

3.33 LINEAR BROADBAND DEPLOYMENT IN A RIGHT-OF-WAY.

(a) CEQA does not apply to a project that consists of linear broadband deployment in a right-of-way if the project meets all of the following conditions:

(1) The project is located in an area identified by the Public Utilities Commission as a component of the statewide open-access middle-mile broadband network pursuant to Section 11549.54 of the Government Code.

(2) The project is constructed along, or within 30 feet of, the right-of-way of any public road or highway.

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(3) The project is either deployed underground where the surface area is restored to a condition existing before the project or placed aerially along an existing utility pole right-of-way.

(4) The project incorporates, as a condition of project approval, measures developed by the Public Utilities Commission or the Department of Transportation to address potential environmental impacts. At a minimum, the project shall be required to include monitors during construction activities and measures to avoid or address impacts to cultural and biological resources.

(5) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the planning department of a city or county as part of a local agency permit process, that are required to mitigate potential impacts of the proposed project, and to comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), as applicable, other applicable state laws, and all applicable federal laws.

(b) If a project meets all of the requirements of subdivision (a), the project applicant shall do all of the following:

(1) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority, of the exemption of the project pursuant to this section.

(2) File a Notice of Exemption.

(3) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.

(4) Comply with all conditions authorized by law imposed by the planning department of a city or county as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), as applicable, other applicable state laws, and all applicable federal laws.

(Pub. Resources Code, § 21080.51.)

3.34 DAYCARE CENTERS, RURAL HEALTH CLINICS, FOOD BANKS, AND ADVANCED MANUFACTURING FACILITIES

CEQA does not apply to the following projects:

(1) Projects that consist exclusively of a day care center, as defined in Section 1596.76 of the Health and Safety Code, that is not located in a residential area.

(2) Projects that consist exclusively of a rural health clinic or federally qualified health center.

(3) Projects that consist exclusively of a facility for advanced manufacturing if the project is located on a site that is zoned exclusively for industrial uses.

(4) Projects that consist exclusively of a nonprofit food bank or food pantry that solicits, stores, and distributes sufficient food to their defined service area, if the project is located on a site that is zoned exclusively for industrial uses.

(Reference: Pub. Resources Code § 21080.69.)

3.35 NEEDLE AND SYRINGE EXCHANGE SERVICES.

The Legislature has authorized cities and counties meeting certain requirements to apply to the State Department of Public Health for authorization to provide hypodermic needle and syringe exchange services consistent with state standards in any location where the State Department of Public Health determines that the conditions exist for the rapid spread of human immunodeficiency virus (HIV), viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. (Health and Safety Code, § 121349.) Needle and syringe exchange services application submissions, authorizations, and operations performed pursuant to Health and Safety Code section 121349 are exempt from review under CEQA. (Health and Safety Code, § 121349(h).)

3.36 REPRODUCTIVE SERVICES COMMUNITY CLINIC

CEQA does not apply to the approval of an application of a community clinic providing reproductive health services if the application meets objective planning standards and is subject to the ministerial review process set forth in Government Code section 65914.900. The following objective planning standards must be satisfied for the development project to qualify for the ministerial approval:

(1) the development must be on a parcel that is within a zone where office, retail, health care, or parking are a principally permitted use;

(2) the development must be for a community clinic licensed pursuant to Section 1204 of the Health and Safety Code that provides reproductive health services as defined in subdivision (f) of Section 423.1 of the Penal Code;

(3) the development must comply with minimum construction standards of adequacy and safety for the physical plant of primary care clinics found in the Building Standards Code;

(4) the development must meet all of the local agency's objective design review standards;

(5) the development must not require the demolition of a historic structure;

(6) the development must not be located on a site described in paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code;

(7) the project must not bet likely to result in adverse impacts to tribal cultural resources; and

(8) the development must not require the demolition of housing.

A local agency, within 60 calendar days of receiving an application pursuant to these provisions, must approve or deny the application subject to specified requirements, including that, among other things, if the local agency determines that the development is in conflict with any of the above-described standards, the local agency is required to provide the development proponent written documentation of which standard or standards the development conflicts with, as specified.

For more information about these requirements, consult Government Code, section 65914.900.

3.37 OTHER SPECIFIC EXEMPTIONS.

CEQA and the State CEQA Guidelines exempt many other specific activities, including early activities related to thermal power plants, ongoing projects, transportation improvement programs, family day care homes, congestion management programs, railroad grade separation projects, restriping of streets or highways to relieve traffic congestion, hazardous or volatile liquid pipelines, and the installation of solar energy systems, including, but not limited to solar panels. Specific statutory exemptions are listed in the Public Resources Code, including Sections 21080 through 21080.35, and in the State CEQA Guidelines, including Sections 15260 through 15285. In addition, other titles of the California Codes provide statutory exemptions from CEQA, including, for example, Government Code section 12012.70.

3.38 CATEGORICAL EXEMPTIONS.

The State CEQA Guidelines establish certain classes of categorical exemptions. These apply to classes of projects which have been determined not to have a significant effect on the environment and which, therefore, are generally exempt from CEQA. For any project that falls within one of these classes of categorical exemptions, the preparation of environmental documents under CEQA is not required. The classes of projects are briefly summarized below. (Reference to the State CEQA Guidelines for the full description of each exemption is recommended.)

The exemptions for Classes 3, 4, 5, 6, and 11 below are qualified in that such projects must be considered in light of the location of the project. A project that is ordinarily insignificant in its

impact on the environment may, in a particularly sensitive environment, be significant. Therefore, these classes are considered to apply in all instances except when the project may impact an environmental resource of hazardous or critical concern that has been designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

All classes of categorical exemptions are qualified. None of the categorical exemptions are applicable if any of the following circumstances exist:

(1) The cumulative impact of successive projects of the same type in the same place over time is significant;

(2) There is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;

(3) The project may result in damage to a scenic resource or may result in a substantial adverse change to a historical resource; or

(4) The project is located on a site which is included on any hazardous waste site or list compiled pursuant to Government Code section 65962.5.

However, a project's greenhouse gas emissions do not, in and of themselves, cause an exemption to be inapplicable if the project otherwise complies with all applicable regulations or requirements adopted to implement statewide, regional, or local plans consistent with State CEQA Guidelines section 15183.5.

With the foregoing limitations in mind, the following classes of activity are generally exempt from CEQA:

Class 1: Existing Facilities. Activities involving the operation, repair, maintenance, permitting, leasing, licensing, minor alteration of—or legislative activities to regulate—existing public or private structures, facilities, mechanical equipment or other property, or topographical features, provided the activity involves negligible or no expansion of existing or former use. The types of "existing facilities" itemized in State CEQA Guidelines section 15301 are not intended to be all-inclusive of the types of projects which might fall within the Class 1 categorical exemption. The key consideration is whether the project involves negligible or no expansion of use. (State CEQA Guidelines, § 15301.)

Class 2: Replacement or Reconstruction. Replacement or reconstruction of existing facilities, structures, or other property where the new facility or structure will be located on the same site as the replaced or reconstructed facility or structure and will have substantially the same purpose and capacity as the replaced or reconstructed facility or structure. (State CEQA Guidelines, § 15302.)

Class 3: New Construction or Conversion of Small Structures. Construction of limited numbers of small new facilities or structures; installation of small new equipment or facilities in small structures; and the conversion of existing small structures from one use to another, when only minor modifications are made in the exterior of the structure. This exemption includes

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structures built for both residential and commercial uses. (State CEQA Guidelines, § 15303 outlines, among other things, the maximum number of structures allowable under this exemption].)

Class 4: Minor Alterations to Land. Minor alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees, except for forestry or agricultural purposes. (State CEQA Guidelines, § 15304.)

Class 5: Minor Alterations in Land Use Limitations. Minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density. (State CEQA Guidelines, § 15305.)

Class 6: Information Collection. Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. (State CEQA Guidelines, § 15306.)

Class 7: Actions by Regulatory Agencies for Protection of Natural Resources. Actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. (State CEQA Guidelines, § 15307.)

Class 8: Actions By Regulatory Agencies for Protection of the Environment. Actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment. (State CEQA Guidelines, § 15308.)

Class 9: Inspection. Inspection activities, including, but not limited to, inquiries into the performance of an operation and examinations of the quality, health or safety of a project. (State CEQA Guidelines, §15309.)

Class 10: Loans. Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. (State CEQA Guidelines, § 15310.)

Class 11: Accessory Structures. Construction or replacement of minor structures accessory or appurtenant to existing commercial, industrial, or institutional facilities, including, but not limited to, on-premise signs; small parking lots; and placement of seasonal or temporary use items, such as lifeguard towers, mobile food units, portable restrooms or similar items in generally the same locations from time to time in publicly owned parks, stadiums or other facilities designed for public use. (State CEQA Guidelines, §15311.)

Class 12: Surplus Government Property Sales. Sales of surplus government property, except for certain parcels of land located in an area of statewide, regional or area-wide concern identified in State CEQA Guidelines section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

(a) The property does not have significant values for wildlife or other environmental purposes; and

(b) Any one of the following three conditions is met:
1. The property is of such size, shape, or inaccessibility that it is incapable of independent development or use;
2. The property to be sold would qualify for an exemption under any other class of categorical exemption in the State CEQA Guidelines; or
3. The use of the property and adjacent property has not changed since the time of purchase by the public agency.

(State CEQA Guidelines, § 15312.)

Class 13: Acquisition of Lands for Wildlife Conservation Purposes. Acquisition of lands for fish and wildlife conservation purposes, including preservation of fish and wildlife habitat, establishment of ecological preserves under Fish and Game Code section 1580, and preservation of access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition. (State CEQA Guidelines, § 15313.)

Class 14: Minor Additions to Schools. Minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten (10) classrooms, whichever is less. The addition of portable classrooms is included in this exemption. (State CEQA Guidelines, § 15314.)

Class 15: Minor Land Divisions. Division(s) of property in urbanized areas zoned for residential, commercial or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20%. (State CEQA Guidelines, §15315.)

Class 16: Transfer of Ownership of Land in Order to Create Parks. Acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:

(a) The management plan for the park has not been prepared, or
(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological resources.

CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource. (State CEQA Guidelines, § 15316.)

Class 17: Open Space Contracts or Easements. Establishment of agricultural preserves, making and renewing of open space contracts under the Williamson Act, or acceptance of easements or fee interests in order to maintain the open space character of the area. (The cancellation of such preserves, contracts, interests or easements is not included in this exemption.) (State CEQA Guidelines, § 15317.)

Class 18: Designation of Wilderness Areas. Designation of wilderness areas under the California Wilderness System. (State CEQA Guidelines, § 15318.)

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Class 19: Annexations of Existing Facilities and Lots for Exempt Facilities.
This exemption applies only to the following annexations:

(a) Annexations to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or prezoning of either the gaining or losing governmental agency, whichever is more restrictive; provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities; and
(b) Annexations of individual small parcels of the minimum size for facilities exempted by Class 3, New Construction or Conversion of Small Structures.

(State CEQA Guidelines, § 15319.)

Class 20: Changes in Organization of Local Agencies. Changes in the organization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district;
(b) Consolidation of two or more districts having identical powers; and
(c) Merger with a city of a district lying entirely within the boundaries of the city.

(State CEQA Guidelines, § 15320.)

Class 21: Enforcement Actions by Regulatory Agencies. Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use issued, adopted or prescribed by the regulatory agency or enforcement of a law, general rule, standard or objective administered or adopted by the regulatory agency; or law enforcement activities by peace officers acting under any law that provides a criminal sanction. The direct referral of a violation of lease, permit, license, certificate, or entitlement to the Agency Attorney for judicial enforcement is exempt under this Class. (Construction activities undertaken by the public agency taking the enforcement or revocation action are not included in this exemption.) (State CEQA Guidelines, § 15321.)

Class 22: Educational or Training Programs Involving No Physical Changes. The adoption, alteration or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods; or
(b) Changes in the trade structure in a school which do not result in changes in student transportation. (State CEQA Guidelines, § 15322.)

Class 23: Normal Operations of Facilities for Public Gatherings. Continued or repeated normal operations of existing facilities for public gatherings for which the facilities were designed, where there is past history, of at least three years, of the facility being used for the same or similar purposes. Facilities included within this exemption include, but are not limited to, race tracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools and amusement parks. (State CEQA Guidelines, § 15323.)

Class 24: Regulation of Working Conditions. Actions taken by the Agency to regulate employee wages, hours of work or working conditions where there will be no demonstrable physical changes outside the place of work. (State CEQA Guidelines, § 15324.)

Class 25: Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources. Transfers of ownership of interest in land in order to preserve open space, habitat, or historical resources. Examples include, but are not limited to, acquisition, sale, or other transfer of areas to: preserve existing natural conditions, including plant or animal habitats; allow continued agricultural use of the areas; allow restoration of natural conditions; preserve open space or lands for natural park purposes; or prevent encroachment of development into floodplains. This exemption does not apply to the development of parks or park uses. (State CEQA Guidelines, § 15325.)

Class 26: Acquisition of Housing for Housing Assistance Programs. Actions by a redevelopment agency, housing authority or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units, provided the housing units are either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units. (State CEQA Guidelines, § 15326.)

Class 27: Leasing New Facilities. Leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency when the Agency determines that the proposed use of the facility:

(a) Conforms with existing state plans and policies and with general, community, and specific plans for which an EIR or Negative Declaration has been prepared;
(b) Is substantially the same as that originally proposed at the time the building permit was issued;
(c) Does not result in a traffic increase of greater than 10% of front access road capacity; and
(d) Includes the provision of adequate employee and visitor parking facilities.

(State CEQA Guidelines, § 15327.)

Class 28: Small Hydroelectric Projects as Existing Facilities. Installation of certain small hydroelectric-generating facilities in connection with existing dams, canals and pipelines, subject to the conditions in State CEQA Guidelines section 15328. (State CEQA Guidelines, § 15328.)

Class 29: Cogeneration Projects at Existing Facilities. Installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting certain conditions listed in State CEQA Guidelines section 15329. (State CEQA Guidelines, § 15329.)

Class 30: Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances. Any minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing $1 million or less.

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(a) No cleanup action shall be subject to this Class 30 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit or the relocation of residences or businesses, or the action involves the potential release into the air of volatile organic compounds as defined in Health and Safety Code section 25123.6, except for small scale in situ soil vapor extraction and treatment systems which have been permitted by the local Air Pollution Control District or Air Quality Management District. All actions must be consistent with applicable state and local environmental permitting requirements including, but not limited to, off-site disposal, air quality rules such as those governing volatile organic compounds and water quality standards, and approved by the regulatory body with jurisdiction over the site;

(b) Examples of such minor cleanup actions include but are not limited to:

1. Removal of sealed, non-leaking drums of hazardous waste or substances that have been stabilized, containerized and are designated for a lawfully permitted destination;
2. Maintenance or stabilization of berms, dikes, or surface impoundments;
3. Construction or maintenance or interim of temporary surface caps;
4. Onsite treatment of contaminated soils or sludge provided treatment system meets Title 22 requirements and local air district requirements;
5. Excavation and/or offsite disposal of contaminated soils or sludge in regulated units;
6. Application of dust suppressants or dust binders to surface soils;
7. Controls for surface water run-on and run-off that meets seismic safety standards;
8. Pumping of leaking ponds into an enclosed container;
9. Construction of interim or emergency ground water treatment systems; or
10. Posting of warning signs and fencing for a hazardous waste or substance site that meets legal requirements for protection of wildlife.

(State CEQA Guidelines, § 15330.)

Class 31: Historical Resource Restoration/Rehabilitation. Maintenance, repairs, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer. (State CEQA Guidelines, § 15331.)

Class 32: Infill Development Projects. Infill development meeting the following conditions:

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;

(c) The project site has no value as habitat for endangered, rare or threatened species;

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(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and

(e) The site can be adequately served by all required utilities and public services.

(State CEQA Guidelines, § 15332.)

Class 33: Small Habitat Restoration Projects.

This exemption applies to projects to assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife, provided that such projects meet the following criteria:

(a) The project does not exceed five acres in size;

(b) There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to Section 15065 of the State CEQA Guidelines;

(c) There are no hazardous materials at or around the project site that may be disturbed or removed; and

(d) The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Examples of small habitat restoration projects include, but are not limited to: revegetation of disturbed areas with native plant species; wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat; stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish; projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment; stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation; and culvert replacement conducted in accordance with published guidelines of DFW or NOAA Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation. (State CEQA Guidelines, § 15333.)

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4. TIME LIMITATIONS

4.01 REVIEW OF PRIVATE PROJECT APPLICATIONS.

Staff shall determine whether the application for a private project is complete within thirty (30) days of receipt of the application. No application may be deemed incomplete based on an applicant's refusal to waive the time limitations set forth in Local Guidelines Sections 4.03 and 4.04.

Accepting an application as complete does not limit the authority of the Agency, acting as Lead Agency or Responsible Agency, to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(Reference: State CEQA Guidelines, § 15101.)

4.02 DETERMINATION OF TYPE OF ENVIRONMENTAL DOCUMENT.

Except as provided in Local Guidelines Sections 4.05 and 4.06, Staff's initial determination as to whether a Negative Declaration, Mitigated Negative Declaration or an EIR should be prepared shall be made within thirty (30) days from the date on which an application for a project is accepted as complete by the Agency. This period may be extended fifteen (15) days with consent of the applicant and the Agency.

(Reference: State CEQA Guidelines, § 15102.)

4.03 COMPLETION AND ADOPTION OF NEGATIVE DECLARATION.

For private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the Negative Declaration/Mitigated Negative Declaration shall be completed and approved within one hundred eighty (180) days from the date when the Agency accepted the application as complete. In the event that compelling circumstances justify additional time and the project applicant and Lead Agency consent thereto, Staff may provide that the 180-day time limit may be extended once for a period of not more than 90 days.

(Reference: State CEQA Guidelines, § 15107.)

4.04 COMPLETION AND CERTIFICATION OF FINAL EIR.

For private projects, the Final EIR shall be completed and certified by the Agency within one (1) year after the date the Agency accepted the application as complete. In the event that compelling circumstances justify additional time and the project applicant consents thereto, the Agency may provide a one-time extension up to ninety (90) days for completing and certifying the EIR.

(Reference: State CEQA Guidelines, § 15108.)

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4.05 PROJECTS SUBJECT TO THE PERMIT STREAMLINING ACT.

The Permit Streamlining Act requires agencies to make decisions on certain development project approvals within specified time limits. If a project is subject to the Permit Streamlining Act, the Agency cannot require the project applicant to submit the informational equivalent of an EIR or prove compliance with CEQA as a prerequisite to determining whether the project application is complete. In addition, if requested by the project applicant, the Agency must begin processing the project application prior to final CEQA action, provided the information necessary to begin the process is available.

(Reference: Gov. Code §§ 65941, 65944.)

Under the Permit Streamlining Act, the Lead Agency must approve or disapprove the development project application within one hundred eighty (180) days from the date on which it certifies the EIR, or within ninety (90) days of certification if an extension for completing and certifying the EIR was granted. If the Lead Agency adopts a Negative Declaration/Mitigated Negative Declaration or determines the development project is exempt from CEQA, it shall approve or disapprove the project application within sixty (60) days from the date on which it adopts the Negative Declaration/Mitigated Negative Declaration or determines that the project is exempt from CEQA.

(Reference: Gov. Code §§ 65950, 65950.1; see also State CEQA Guidelines, § 15107.)

Except for waivers of the time periods for preparing a joint Environmental Impact Report/Environmental Impact Statement (as outlined in Government Code sections 65951 and 65957), the Agency cannot require a waiver of the time limits specified in the Permit Streamlining Act as a condition of accepting or processing a development project application. In addition, the Agency cannot disapprove a development project application in order to comply with the time limits specified in the Permit Streamlining Act.

(Reference: Gov. Code §§ 65940.5, 65952.2.)

4.06 PROJECTS, OTHER THAN THOSE SUBJECT TO THE PERMIT STREAMLINING ACT, WITH SHORT TIME PERIODS FOR APPROVAL.

A few statutes require agencies to make decisions on project applications within time limits that are so short that review of the project under CEQA would be difficult. To enable the Agency as Lead Agency to comply with both the enabling statute and CEQA, the Agency shall deem a project application as not received for filing under the enabling statute until such time as the environmental documentation required by CEQA is complete. This section applies where all of the following conditions are met:

(a) The enabling statute for a program, other than development projects under Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the Agency to take action on an application within a specified period of time of six (6) months or less;
(b) The enabling statute provides that the project is approved by operation of law if the Agency fails to take any action within the specified time period; and

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(c) The project application involves the Agency's issuance of a lease, permit, license, certificate or other entitlement for use.

In any case, the environmental document shall be completed or certified and the decision on the application shall be made within the period established by the Permit Streamlining Act (Government Code sections 65920, et seq.).

(Reference: State CEQA Guidelines, § 15111.)

4.07 WAIVER OR SUSPENSION OF TIME PERIODS.

These deadlines may be waived by the applicant if the project is subject to both CEQA and the National Environmental Policy Act ("NEPA").

An unreasonable delay by an applicant in meeting the Agency's requests necessary for the preparation of a Negative Declaration, Mitigated Negative Declaration, or an EIR shall suspend the running of the time periods described in Local Guidelines sections 4.03 and 4.04 for the period of the unreasonable delay. Alternatively, the Agency may disapprove a project application where there is unreasonable delay in meeting requests. The Agency may also allow a renewed application to start at the same point in the process where the prior application was when it was disapproved.

(Reference: State CEQA Guidelines, §§ 15109, 15110, and 15224; see Section 5.04 of these Local Guidelines for information about projects that are subject to both CEQA and NEPA.)

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5. INITIAL STUDY

5.01 PREPARATION OF INITIAL STUDY.

If the Agency determines that it is the Lead Agency for a project which is not exempt, the Agency will normally prepare an Initial Study to ascertain whether the project may have a substantial adverse effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial. All phases of project planning, implementation and operation must be considered in the Initial Study. An Initial Study may rely on expert opinion supported by facts, technical studies or other substantial evidence. However, an Initial Study is neither intended nor required to include the level of detail included in an EIR.

The Agency, as Lead Agency, may use any of the following arrangements or combination of arrangements to prepare an Initial Study:

(1) Preparing the Initial Study directly with the Agency's own staff.

(2) Contracting with another entity, public or private, to prepare the Initial Study.

(3) Accepting a draft Initial Study prepared by the applicant, a consultant retained by the applicant, or any other third person.

(4) Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of an Initial Study by an independent contractor.

(5) Using a previously prepared Initial Study.

The Initial Study sent out for public review, however, must reflect the independent judgment of the Lead Agency.

For private projects, the person or entity proposing to carry out the project shall complete Form "I" of these Local CEQA Guidelines, submit the completed Form "I" to the Agency, and submit all other data and information as may be required by the Agency to determine whether the proposed project may have a significant effect on the environment. All costs incurred by the Agency in reviewing the data and information submitted, or in conducting its own investigation based upon such data and information, or in preparing an Initial Study for the project shall be borne by the person or entity proposing to carry out the project.

(Reference: State CEQA Guidelines, §§ 15063, 15084.)

5.02 INFORMAL CONSULTATION WITH OTHER AGENCIES.

When more than one public agency will be involved in undertaking or approving a project, the Lead Agency shall consult with all Responsible and any Trustee Agencies. Such consultation shall be undertaken in compliance with the notice procedures applicable to the type of CEQA document being prepared. See Section 6.04, Negative Declarations, and Sections 7.03 and 7.25, EIRs.

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When the Agency is acting as Lead Agency, the Agency may choose to engage in early consultation with Responsible and Trustee Agencies before the Agency begins to prepare the Initial Study. This early consultation may be done quickly and informally and is intended to ensure that the EIR, Negative Declaration or Mitigated Negative Declaration reflects the concerns of all Responsible Agencies that will issue approvals for the project and all Trustee Agencies responsible for natural resources affected by the project. The Agency's early consultation process may include consultation with other individuals or organizations with an interest in the project, if the Agency so desires. The Office of Land Use and Climate Innovation ("LCI"), upon request of the Agency or a private project applicant, shall assist in identifying the various Responsible Agencies for a proposed project and ensure that the Responsible Agencies are notified regarding any early consultation. In the case of a project undertaken by a public agency, the LCI, upon request of the Agency, shall ensure that any Responsible Agency or public agency that has jurisdiction by law with respect to the project is notified regarding any early consultation.

If, during the early consultation process it is determined that the project will clearly have a significant effect on the environment, the Agency, as Lead Agency, may immediately dispense with the Initial Study and determine that an EIR is required.

(Reference: State CEQA Guidelines, § 15063.)

5.03 CONSULTATION WITH PRIVATE PROJECT APPLICANT.

During or immediately after preparation of an Initial Study for a private project, the Agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the Initial Study. If the project can be revised to avoid or mitigate effects to a level of insignificance and there is no substantial evidence before the Agency that the project, as revised, may have a significant effect on the environment, the Agency may prepare and adopt a Negative Declaration or Mitigated Negative Declaration. If any significant effect may still occur despite alterations of the project, an EIR must be prepared.

(Reference: State CEQA Guidelines, § 15063(g).)

5.04 PROJECTS SUBJECT TO NEPA.

Projects that are carried out, financed, or approved in whole or in part by a federal agency are subject to the provisions of NEPA in addition to CEQA. To the extent possible, the State CEQA Guidelines encourage the Agency, when it is a Lead Agency under CEQA, to use the federally-prepared Environmental Impact Statement ("EIS") or Finding of No Significant Impact ("FONSI") or to prepare a joint CEQA/NEPA document instead of preparing separate NEPA and CEQA documents for a project that is subject to both NEPA and CEQA. (State CEQA Guidelines, § 15220.)

For example, the Agency should attempt to work in conjunction with the federal agency involved in the project to prepare a combined EIR-EIS or Negative Declaration-FONSI. (State CEQA Guidelines, § 15222.) To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document. The Lead Agency may also enter into a Memorandum of Understanding with the federal agency to ensure that both federal and state requirements are met.

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The Agency is required to cooperate with the federal agency and to utilize joint planning processes, environmental research and studies, public hearings, and environmental documents to the fullest extent possible. (State CEQA Guidelines, § 15226.) However, since NEPA does not require an examination of mitigation measures or growth-inducing impacts, analysis of mitigation measures and growth-inducing impacts will need to be added before NEPA documents may be used to satisfy CEQA. (State CEQA Guidelines, § 15221.)

For projects that are subject to NEPA, a scoping meeting held pursuant to NEPA satisfies the CEQA scoping requirement as long as notice is provided to the agencies and individuals listed in Local Guidelines Section 7.10, and provided in accordance with these Local Guidelines.

If the federal agency refuses to cooperate with the Agency with regard to the preparation of joint documents, the Agency should attempt to involve a state agency in the preparation of the EIR, Negative Declaration, or Mitigated Negative Declaration. Since federal agencies are explicitly permitted to utilize environmental documents prepared by agencies of statewide jurisdiction, it is possible that the federal agency will reuse the state-prepared CEQA documents instead of requiring the applicant to fund a redundant set of federal environmental documents. (State CEQA Guidelines, § 15228.)

Where the federal agency has circulated the EIS or FONSI and the circulation satisfied the requirements of CEQA and any other applicable laws, the Agency, when it is a Lead Agency under CEQA, may use the EIS or FONSI in place of an EIR or Negative Declaration without having to recirculate the federal documents. The Agency's intention to adopt the previously circulated EIS or FONSI must be publicly noticed in the same way as a Notice of Availability of a Draft EIR. Special rules may apply when the environmental documents are prepared for projects involving the reuse of military bases. (See State CEQA Guidelines, § 15225.)

5.05 AN INITIAL STUDY.

The Initial Study shall be used to determine whether a Negative Declaration, Mitigated Negative Declaration or an EIR shall be prepared for a project. It provides written documentation of whether the Agency found evidence of significant adverse impacts which might occur. The purposes of an Initial Study are to:

(a) Identify environmental impacts;
(b) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is written;
(c) Focus an EIR, if one is required, on potentially significant environmental effects;
(d) Facilitate environmental assessment early in the design of a project;
(e) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;
(f) Eliminate unnecessary EIRs; and
(g) Determine whether a previously prepared EIR could be used for the project.

(Reference: State CEQA Guidelines, § 15063.)

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5.06 CONTENTS OF INITIAL STUDY.

An Initial Study shall contain in brief form:

(a) A description of the project, including the location of the project. The project description must be consistent throughout the environmental review process;
(b) An identification of the environmental setting. The environmental setting is usually the existing physical environmental conditions in the vicinity of the project, as they exist at the time the Notice of Preparation is published, or if no Notice of Preparation is published, such as in the case of a Negative Declaration or Mitigated Negative Declaration, at the time environmental analysis begins. The environmental setting should describe both the project site and surrounding properties. The description should include, but not necessarily be limited to, a discussion of existing structures, land use, energy supplies, topography, water usage, soil stability, plants and animals, and any cultural, historical, or scenic aspects. This environmental setting will normally constitute the baseline physical conditions against which a Lead Agency may compare the project to determine whether an impact is significant;
(c) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries are briefly explained to show the evidence supporting the entries. The brief explanation may be through either a narrative or a reference to other information such as attached maps, photographs, or an earlier EIR or Negative Declaration or Mitigated Negative Declaration. A reference to another document should include a citation to the page or pages where the information is found;
(d) A discussion of ways to mitigate any significant effects identified;
(e) An examination of whether the project is consistent with existing zoning and local land use plans and other applicable land use controls;
(f) The name of the person or persons who prepared or participated in the Initial Study; and
(g) Identification of prior EIRs or environmental documents that could be used with the project.

(Reference: State CEQA Guidelines, § 15063(d).)

5.07 USE OF A CHECKLIST INITIAL STUDY.

When properly completed, the Environmental Checklist (Form "J") will meet the requirements of Local Guidelines Section 5.05 for an Initial Study provided that the entries on the checklist are explained. Either the Environmental Checklist (Form "J") should be expanded or a separate attachment should be prepared to describe the project, including its location, and to identify the environmental setting.

California courts have rejected the use of a bare, unsupported Environmental Checklist as an Initial Study. An Initial Study must contain more than mere conclusions. It must disclose supporting data or evidence upon which the Lead Agency relied in conducting the Initial Study. The Lead Agency must augment checklists with supporting factual data and reference information sources when completing the forms. Explanation of all "potential impact" answers should be provided on attached sheets. For controversial projects, it is advisable to state briefly why "no"

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answers were checked. If practicable, attach a list of reference materials, such as prior EIRs, plans, traffic studies, air quality data, or other supporting studies.

5.08 EVALUATING SIGNIFICANT ENVIRONMENTAL EFFECTS.

In evaluating the environmental significance of effects disclosed by the Initial Study, the Lead Agency shall consider:

(a) Whether the Initial Study and/or any comments received informally during consultations indicate that a fair argument can be made that the project may have a significant adverse environmental impact that cannot be mitigated to a level of insignificance. Even if a fair argument can be made to the contrary, an EIR should be prepared;

(b) Whether both primary (direct) and reasonably foreseeable secondary (indirect) consequences of the project were evaluated. Primary consequences are immediately related to the project, while secondary consequences are related more to the primary consequences than to the project itself. For example, secondary impacts upon the resources base, including land, air, water and energy use of an area, may result from population growth, a primary impact;

(c) Whether adverse social and economic changes will result from a physical change caused by the project. Adverse economic and social changes resulting from a project are not, in themselves, significant environmental effects. However, if such adverse changes cause physical changes in the environment, those consequences may be used as the basis for finding that the physical change is significant;

(d) Whether there is serious public controversy or disagreement among experts over the environmental effects of the project. However, the existence of public controversy or disagreement among experts does not, without more, require preparation of an EIR in the absence of substantial evidence of significant effects;

(e) Whether the cumulative impact of the project is significant and whether the incremental effects of the project are "cumulatively considerable" (as defined in Local Guidelines Section 11.13) when viewed in connection with the effects of past projects, current projects, and probable future projects. The Agency may conclude that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem. To be used for this purpose, such a plan or program must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process. In relying on such a plan or program, the Agency should explain which requirements apply to the project and ensure that the project's incremental contribution is not cumulatively considerable; and

(f) Whether the project may cause a substantial adverse change in the significance of an archaeological or historical resource.

The Agency may use a threshold of significance (as that term is defined in State CEQA Guidelines section 15064.7) to determine whether a project may cause a significant environmental

impact. When using a threshold of significance, the Agency should briefly explain how compliance with the threshold means that the project's impacts are less than significant. Compliance with the threshold, however, does not relieve the Agency of the obligation to consider substantial evidence indicating that a project's environmental effects may still be significant.

(Reference: State CEQA Guidelines, § 15064(b)(2).)

5.09 DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS

On or about December 28, 2018, the California Natural Resources Agency added a new section to the State CEQA Guidelines—Section 15064.3, entitled "Determining the Significance of Transportation Impacts." Section 15064.3 provides:

(a) Purpose.

This section describes specific considerations for evaluating a project's transportation impacts. Generally, vehicle miles traveled is the most appropriate measure of transportation impacts. For the purposes of this section, "vehicle miles traveled" refers to the amount and distance of automobile travel attributable to a project. Other relevant considerations may include the effects of the project on transit and non-motorized travel. Except as provided in subdivision (b)(2) below (regarding roadway capacity), a project's effect on automobile delay shall not constitute a significant environmental impact.

(b) Criteria for Analyzing Transportation Impacts.

(1) 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.

(2) 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.

(3) Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, a lead agency may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other

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destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate.

(4) Methodology. A lead agency has discretion to choose the most appropriate methodology to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project's vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project. The standard of adequacy in Section 15151 shall apply to the analysis described in this section.

(c) Applicability.

The provisions of this section shall apply prospectively as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately. Beginning on July 1, 2020, the provisions of this section shall apply statewide.

(Reference: State CEQA Guidelines, § 15064.3.)

5.10 MANDATORY FINDINGS OF SIGNIFICANT EFFECT.

Whenever there is substantial evidence, in light of the whole record, that any of the conditions set forth below may occur, the Lead Agency shall find that the project may have a significant effect on the environment and thereby shall require preparation of an EIR:

(a) The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of major periods of California history or prehistory;
(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals;
(c) The project has possible environmental effects which are individually limited but cumulatively considerable, as defined in Local Guidelines Section 11.13. That is, the Agency, when acting as Lead Agency, is required to determine whether the incremental impacts of a project are cumulatively considerable by evaluating them against the back-drop of the environmental effects of the other projects; or
(d) The environmental effects of a project will cause substantial adverse effects on humans either directly or indirectly.

If, before the release of the CEQA document for public review, the potential for triggering one of the mandatory findings of significance is avoided or mitigation measures or project modifications reduce the potentially significant impacts to a point where clearly the mandatory

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finding of significance is not triggered, preparation of an EIR is not mandated. If the project's potential for triggering one of the mandatory findings of significance cannot be avoided or mitigated to a point where the criterion is clearly not triggered, an EIR shall be prepared, and the relevant mandatory findings of significance shall be used:

(1) as thresholds of significance for purposes of preparing the EIR's impact analysis;

(2) in making findings on the feasibility of alternatives or mitigation measures;

(3) when found to be feasible, in making changes in the project to lessen or avoid the adverse environmental impacts; and

(4) when necessary, in adopting a statement of overriding considerations.

Although an EIR prepared for a project that triggers one of the mandatory findings of significance must use the relevant mandatory findings as thresholds of significance, the EIR need not conclude that the impact itself is significant. Rather, the Agency, as Lead Agency, must exercise its discretion and determine, on a case-by-case basis after evaluating all of the relevant evidence, whether the project's environmental impacts are avoided or mitigated below a level of significance or whether a statement of overriding considerations is required.

With regard to a project that has the potential to substantially reduce the number or restrict the range of a protected species, the Agency, as Lead Agency, does not have to prepare an EIR solely due to that impact, provided the project meets the following three criteria:

(a) The project proponent must be bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan and/or natural communities conservation plan;
(b) The state or federal agency must have approved the habitat conservation plan and/or natural community conservation plan in reliance on an EIR and/or EIS; and
(c) The mitigation requirements must either avoid any net loss of habitat and net reduction in number of the affected species, or preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species below a level of significance.

(Reference: State CEQA Guidelines, § 15065.)

5.11 MANDATORY PREPARATION OF AN EIR FOR WASTE-BURNING PROJECTS.

Lead Agencies shall prepare or cause to be prepared and certify the completion of an EIR, or, if appropriate, an Addendum, Supplemental EIR, or Subsequent EIR, for any project involving the burning of municipal wastes, hazardous waste or refuse-derived fuel, including, but not limited to, tires, if the project consists of any of the following:

(a) The construction of a new facility;
(b) The expansion of an existing hazardous waste burning facility which would increase its permitted capacity by more than 10%;

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(c) The issuance of a hazardous waste facilities permit to a land disposal facility, as defined in Local Guidelines Section 11.32; or
(d) The issuance of a hazardous waste facilities permit to an offsite large treatment facility, as defined in Local Guidelines Sections 11.33 and 11.53.

This section does not apply to projects listed in subsections (c) and (d), immediately above, if the facility only manages hazardous waste that is identified or listed pursuant to Health and Safety Code section 25140 or 25141 or only conducts activities which are regulated pursuant to Health and Safety Code sections 25100, et seq.

The Lead Agency shall calculate the percentage of expansion for an existing facility by comparing the proposed facility's capacity with either of the following, as applicable:

(a) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Health and Safety Code section 25200, or its grant of interim status pursuant to Health and Safety Code section 25200.5, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of the facility for the burning of hazardous waste granted before January 1, 1990; or
(b) The facility capacity authorized in the facility's original hazardous facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

This section does not apply to any project over which the State Energy Resources Conservation and Development Commission has assumed jurisdiction per Health and Safety Code sections 25500 et seq.

The EIR requirement is also subject to a number of exceptions for specific types of waste-burning projects. (Public Resources Code section 21151.1 and State CEQA Guidelines section 15081.5.) Even if preparation of an EIR is not mandatory for a particular type of waste-burning project, those projects are not exempt from the other requirements of CEQA, the State CEQA Guidelines, or these Local Guidelines. In addition, waste-burning projects are subject to special notice requirements under Public Resources Code section 21092. Specifically, in addition to the standard public notices required by CEQA, notice must be provided to all owners and occupants of property located within one-fourth mile of any parcel or parcels on which the waste-burning project will be located. (Public Resources Code section 21092(c); see Local Guidelines Sections 6.12 and 7.27.)

5.12 DEVELOPMENT PURSUANT TO AN EXISTING COMMUNITY PLAN AND EIR.

Before preparing a CEQA document, Staff should determine whether the proposed project involves development consistent with an earlier zoning or community plan to accommodate a particular density for which an EIR has been certified. If an earlier EIR for the zoning or planning action has been certified, and if the proposed project concerns the approval of a subdivision map or development, CEQA applies only to the extent the project raises environmental effects peculiar to the parcel which were not addressed in the earlier EIR. Off-site and cumulative effects not discussed in the general plan EIR must still be considered. Mitigation measures set out in the earlier EIR should be implemented at this stage.

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Environmental effects shall not be considered peculiar to the parcel if uniformly applied development policies or standards have been previously adopted by a city or county with a finding based on substantial evidence that the policy or standard will substantially mitigate the environmental effect when applied to future projects. Examples of uniformly applied development policies or standards include, but are not limited to: parking ordinances; public access requirements; grading ordinances; hillside development ordinances; flood plain ordinances; habitat protection or conservation ordinances; view protection ordinances; and requirements for reducing greenhouse gas emissions as set forth in adopted land use plans, policies or regulations. Any rezoning action consistent with the Community Plan shall be subject to exemption from CEQA in accordance with this section. "Community Plan" means part of a city's general plan which: (1) applies to a defined geographic portion of the total area included in the general plan; (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by referencing each of the mandatory elements specified in Government Code section 65302; and (3) contains specific development policies adopted for the area in the Community Plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.

(Reference: State CEQA Guidelines, § 15183.)

5.13 LAND USE POLICIES.

When a project will amend a general plan or another land use policy, the Initial Study must address how the change in policy and its expected direct and indirect effects will affect the environment. When the amendments constitute substantial changes in policies that result in a significant impact on the environment, an EIR may be required.

5.14 EVALUATING IMPACTS ON HISTORICAL RESOURCES.

Projects that may cause a substantial adverse change in the significance of a historical resource, as defined in Local Guidelines Section 11.28 are projects that may have a significant effect on the environment, thus requiring consideration under CEQA. Particular attention and care should be given when considering such projects, especially projects involving the demolition of a historical resource, since such demolitions have been determined to cause a significant effect on the environment.

Substantial adverse change in the significance of a historical resource means physical demolition, destruction, relocation or alteration of the resource or its immediate surroundings, such that the significance of a historical resource would be materially impaired.

The significance of a historical resource is materially impaired when a project:

(a) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in, the California Register of Historical Resources;
(b) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources or its identification in a historical resources survey, unless the Lead Agency establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

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(c) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by the Lead Agency for purposes of CEQA.

Generally, a project that follows either one of the following sets of standards and guidelines will be considered mitigated to a level of less than significant: (a) the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings; or (b) the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer.

In the event of an accidental discovery of a possible historical resource during construction of the project, the Agency may provide for the evaluation of the find by a qualified archaeologist or other professional. If the find is determined to be a historical resource, the Agency should take appropriate steps to implement appropriate avoidance or mitigation measures. Work on non-affected portions of the project, as determined by the Agency, may continue during the process. Curation may be an appropriate mitigation measure for an artifact that must be removed during project excavation or testing.

(Reference: State CEQA Guidelines, § 15064.5.)

5.15 EVALUATING IMPACTS ON ARCHAEOLOGICAL SITES.

When a project will impact an archaeological site, the Agency shall first determine whether the site is a historical resource, as defined in Local Guidelines Section 11.28 If the archaeological site is a historical resource, it shall be treated and evaluated as such, and not as an archaeological resource. If the archaeological site does not meet the definition of a historical resource, but does meet the definition of a unique archaeological resource set forth in Public Resources Code section 21083.2, the site shall be treated in accordance with said provisions of the Public Resources Code. The time and cost limitations described in Section 21083.2(c-f) do not apply to surveys and site evaluation activities intended to determine whether the project site contains unique archaeological resources.

If the archaeological resource is neither a unique archaeological resource nor a historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

In the event of an accidental discovery of a possible unique archaeological resource during construction of the project, the Agency may provide for the evaluation of the find by a qualified archaeologist. If the find is determined to be a unique archaeological resource, the Agency should take appropriate steps to implement appropriate avoidance or mitigation measures. Work on non-affected portions of the project, as determined by the Agency, may continue during the process. Curation may be an appropriate mitigation measure for an artifact that must be removed during project excavation or testing.

When an Initial Study identifies the existence of, or the probable likelihood of, Native American human remains within the Project, the Agency shall comply with the provisions of State CEQA Guidelines section 15064.5(d). In the event of an accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the Agency shall comply with the provisions of State CEQA Guidelines section 15064.5(e).

(Reference: State CEQA Guidelines, § 15064.5(c).)

5.16 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

(a) Projects Subject to Consultation Requirements.

For certain development projects, cities and counties must consult with water agencies. If the Agency is a municipal water provider, the city or county may request that the Agency prepare a water supply assessment to be included in the relevant environmental documentation for the project. The Agency may refer to this section when preparing such an assessment or when reviewing projects in its role as a Responsible Agency. This section applies only to water demand projects as defined by Local Guidelines Section 11.85. Program level environmental review may not need to be as extensive as project level environmental review. (See Local Guidelines Sections 8.03 and 8.08.)

(b) Water Supply Assessment.

When a city or county as Lead Agency determines the type of environmental document that will be prepared for a water demand project or any project that includes a water demand project, the city or county must identify any public water system (as defined in Local Guidelines Sections 11.61 and 11.85) that may supply water for the project. The city or county must also request that the public water system determine whether the projected demand associated with the project was included in the most recently adopted Urban Water Management Plan. The city or county must also request that the public water system prepare a specified water supply assessment for approval at a regular or special meeting of the public water system governing body. A sample request for a water supply assessment is provided as Form "N" of these Local CEQA Guidelines.

If no public water system is identified that may supply water for the water demand project, the city or county shall prepare the water supply assessment. The city or county shall consult with any entity serving domestic water supplies whose service area includes the site of the water demand project, the local agency formation commission, and the governing body of any public water system adjacent to the site of the water demand project. The city council or county board of supervisors must approve the water assessment prepared pursuant to this paragraph at a regular or special meeting.

As per Water Code section 10910, the water assessment must include identification of existing water supply entitlements, water rights, or water service contracts relevant to the water supply for the proposed project and water received in prior years pursuant to those entitlements, rights, and contracts, and further information is required if water supplies include groundwater. The water assessment must determine the ability of the public water system to meet existing and future demands along with the demands of the proposed water demand project in light of existing

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and future water supplies. This supply demand analysis is to be conducted via a twenty-year projection, and must assess water supply sufficiency during normal year, single dry year, and multiple dry year hydrology scenarios. If the public water agency concludes that the water supply is, or will be, insufficient, it must submit plans for acquiring additional water supplies.

The city or county may grant the public water agency a thirty (30) day extension of time to prepare the assessment if the public water agency requests an extension within ninety (90) days of being asked to prepare the assessment. If the governing body of the public water system fails to request and receive an extension of time, or fails to submit the water assessment notwithstanding the thirty (30) day extension, the city or county may seek a writ of mandamus to compel the governing body of the public water system to comply.

If a water-demand project has been the subject of a water assessment, no additional water assessment shall be required for subsequent water-demand projects that were included in the larger water-demand project if all of the following criteria are met:

(1) The entity completing the water assessment concluded that its water supplies are sufficient to meet the projected water demand associated with the larger water-demand project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses; and

(2) None of the following changes has occurred since the completion of the water assessment for the larger water-demand project:

(A) Changes in the larger water-demand project that result in a substantial increase in water demand for the water-demand project;

(B) Changes in the circumstances or conditions substantially affecting the ability of the public water system identified in the water assessment to provide a sufficient supply of water for the water demand project; and

(C) Significant new information becomes available which was not known and could not have been known at the time when the entity had reached its assessment conclusions.

(3) The city or county shall include the water assessment, and any water acquisition plan in the EIR, negative declaration, or mitigated negative declaration, or any supplement thereto, prepared for the project, and may include an evaluation of the water assessment and water acquisition plan information within such environmental document. A discussion of water supply availability should be included in the main text of the environmental document. Normally, this discussion should be based on the data and information included in the water supply assessment. In making its required findings under CEQA, the city or county shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If a city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project.

The degree of certainty regarding the availability of water supplies will vary depending on the stage of project approval. A Lead Agency should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan (i.e. general plan, specific plan). An analysis of water supply in an environmental document may incorporate by reference information in a water supply assessment, urban water management plan, or other publicly available sources. The analysis shall include the following:

(1) Sufficient information regarding the project's proposed water demand and proposed water supplies to permit the Lead Agency to evaluate the pros and cons of supplying the amount of water that the project will need.

(2) An analysis of the reasonably foreseeable environmental impacts of supplying water throughout all phases of the project.

(3) An analysis of circumstances affecting the likelihood of the water's availability, as well as the degree of uncertainty involved. Relevant factors may include but are not limited to, drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply.

(4) If the Lead Agency cannot determine that a particular water supply will be available, it shall conduct an analysis of alternative sources, including at least in general terms the environmental consequences of using those alternative sources, or alternatives to the project that could be served with available water.

For complete information on these requirements, consult Water Code sections 10910, et seq. For other CEQA provisions applicable to these types of projects, see Local Guidelines Sections 7.03 and 7.25.

5.17 SUBDIVISIONS WITH MORE THAN 500 DWELLING UNITS.

Cities and counties must obtain written verification (see Form "O" for a sample) from the applicable public water system(s) that a sufficient water supply is available before approving certain residential development projects. If the Agency is a municipal water provider for a project, the city or county may request such a verification from the Agency. The Agency should also be aware of these requirements when reviewing projects in its role as a Responsible Agency.

Cities and counties are prohibited from approving a tentative map, parcel map for which a tentative map was not required, or a development agreement for a subdivision of property of more than 500 dwellings units, unless:

(1) The Board of Directors, Board of Supervisors, or the advisory agency receives written verification from the applicable public water system that a sufficient water supply is available; or

(2) Under certain circumstances, the Board of Directors, Board of Supervisors or the advisory agency makes a specified finding that sufficient water supplies are, or will be, available prior to completion of the project.

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For complete information on these requirements, consult Government Code section 66473.7.

5.18 IMPACTS TO OAK WOODLANDS.

When a county prepares an Initial Study to determine what type of environmental document will be prepared for a project within its jurisdiction, the county must determine whether the project may result in a conversion of oak woodlands that will have a significant effect on the environment. Normally, this rule will not apply to projects undertaken by the Agency. However, if the Agency is a Responsible Agency on such a project, the Agency should endeavor to ensure that the county, as Lead Agency, analyzes these impacts in accordance with CEQA.

(Reference: Pub. Resources Code, § 21083.4.)

5.19 CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS.

A. Estimating or Calculating the Magnitude of the Project's Greenhouse Gas Emissions.

The Agency shall analyze the greenhouse gas emissions of its projects as required by State CEQA Guidelines section 15064.4. For projects subject to CEQA, the Agency shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.

In performing analysis of greenhouse gas emissions, the Agency, as Lead Agency, shall have discretion to determine, in the context of a particular project, whether to:

(1) Quantify greenhouse gas emissions resulting from a project; and/ or

(2) Rely on a qualitative analysis or performance-based standards.

B. Factors in Determining Significance.

In determining the significance of a project's greenhouse gas emissions, the Agency, when acting as Lead Agency, should focus its analysis on the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. A project's incremental contribution may be cumulatively considerable even if it appears relatively small compared to statewide, national, or global emissions. The Agency's analysis should consider a timeframe that is appropriate for the project. The Agency's analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes.

Once the amount of a project's greenhouse gas emissions have been described, estimated, or calculated, the Agency should consider the following factors, among others, to determine whether those emissions are significant:

(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting. Physical environmental conditions in the vicinity of the project, as they exist at the time the Notice of

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Preparation is published or the time when the environmental analysis is commenced, will normally constitute the baseline. All project phases, including construction and operation, should be considered in determining whether a project will cause emissions to increase or decrease as compared to the baseline;

(2) Whether the project emissions exceed a threshold of significance that the Lead Agency determines applies to the project. The Lead Agency may rely on thresholds of significance developed by experts or other agencies, provided that application of the threshold and the significance conclusion is supported with substantial evidence. When relying on thresholds developed by other agencies, the Lead Agency should ensure that the threshold is appropriate for the project and the project's location; and

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (see, e.g., State CEQA Guidelines section 15183.5(b)). Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project. In determining the significance of 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 not cumulatively considerable.

The Lead Agency may use a model or methodology to estimate greenhouse gas emissions resulting from a project. 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. The Lead Agency must support its selection of a model or methodology with substantial evidence. The Lead Agency should explain the limitations of the particular model or methodology selected for use.

C. Consistency with Applicable Plans.

When an EIR is prepared, it must discuss any inconsistencies between the proposed project and any applicable general plan, specific plans, and regional plans. This includes, but is not limited to, any applicable air quality attainment plans, regional blueprint plans, or plans for the reduction of greenhouse gas emissions.

D. Mitigation Measures Related to Greenhouse Gas Emissions.

Lead Agencies must consider feasible means of mitigating the significant effects of greenhouse gas emissions. Any such mitigation measure must be supported by substantial

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evidence and be subject to monitoring or reporting. Potential mitigation will depend on the particular circumstances of the project, but may include the following, among others:

(1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the Lead Agency's decision;

(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in State CEQA Guidelines Appendix F;

(3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;

(4) Measures that sequester greenhouse gases; and

(5) In the case of the adoption of a plan, such as a general plan, long range development plan, or plan for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

E. Streamlined Analysis of Greenhouse Gas Emissions.

Under certain limited circumstances, the legislature has specifically declared that the analysis of greenhouse gas emissions or climate change impacts may be limited. Public Resources Code sections 21155, 21155.2, and 21159.28 provide that if certain residential, mixed use and transit priority projects meet specified ratios and densities, then the lead agencies for those projects may conduct a limited review of greenhouse gas emissions or may be exempted from analyzing global warming impacts that result from cars and light duty trucks, if a detailed list of requirements is met. However, unless the project is exempt from CEQA, the Lead Agency must consider whether such projects will result in greenhouse gas emissions from other sources, including, but not limited to, energy use, water use, and solid waste disposal.

F. Tiering.

The Agency may analyze and mitigate the significant effects of greenhouse gas emissions at a programmatic level. Later project-specific environmental documents may then tier from and/or incorporate by reference that existing programmatic review.

G. Plans for the Reduction of Greenhouse Gas Emissions.

Public agencies may choose to analyze and mitigate greenhouse gas emissions in a plan for the reduction of greenhouse gas emissions or in a similar document. A plan for the reduction of greenhouse gas emissions should:

(1) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;

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(2) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

(3) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(4) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(5) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels; and

(6) Be adopted in a public process following environmental review.

A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR, or adoption of another environmental document, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a plan for the reduction of greenhouse gas emissions for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project. If there is substantial evidence that the effects of a particular project may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the plan for reduction of greenhouse gas emissions, an EIR must be prepared for the project.

H. Analyzing the Effects of Climate Change on the Project.

Where an EIR is prepared for a project, the EIR shall analyze any significant environmental effects the project might cause by bringing development and people into the project area that may be affected by climate change. In particular, the EIR should evaluate any potentially significant impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas. The analysis may be limited to the potentially significant effects of locating the project in a potentially hazardous location. Further, this analysis may be limited by the project's life in relation to the potential of such effects to occur and the availability of existing information related to potential future effects of climate change. Further, the EIR need not include speculation regarding such future effects.

5.20 ENERGY CONSERVATION.

Potentially significant energy implications of a project must be considered in an EIR to the extent relevant and applicable to the project. Therefore, the project description should identify the following as applicable or relevant to the particular project:

(1) Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this

discussion should consider the energy intensiveness of materials and equipment required for the project;

(2) Total energy requirements of the project by fuel type and end use;

(3) Energy conservation equipment and design features;

(4) Identification of energy supplies that would serve the project; and

(5) Total estimated daily vehicle trips to be generated by the project and the additional energy consumed per trip by mode.

As described in Local Guidelines Section 5.06, above, an initial study must include a description of the environmental setting. The discussion of the environmental setting may include existing energy supplies and energy use patterns in the region and locality. The Agency may also consider the extent to which energy supplies have been adequately considered in other environmental documents. Environmental impacts may include:

(1) The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed;

(2) The effects of the project on local and regional energy supplies and on requirements for additional capacity;

(3) The effects of the project on peak and base period demands for electricity and other forms of energy;

(4) The degree to which the project complies with existing energy standards;

(5) The effects of the project on energy resources; and/or

(6) The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

As discussed above in Section 5.06, the Initial Study must identify the potential environmental effects of the proposed activity. That discussion must include the unavoidable adverse effects. Unavoidable adverse effects may include wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated.

When discussing energy conservation, alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.

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5.21 ENVIRONMENTAL IMPACT ASSESSMENT.

The Initial Study identifies which environmental impacts may be significant. Based upon the Initial Study, Staff shall determine whether a proposed project may or will have a significant effect on the environment. Such determination shall be made in writing on the Environmental Impact Assessment Form (Form "C"). If Staff finds that a project will not have a significant effect on the environment, it shall recommend that a Negative Declaration be prepared and adopted by the decision-making body. If Staff finds that a project may have a significant effect on the environment, but the effects can be mitigated to a level of insignificance, it shall recommend that a Mitigated Negative Declaration be prepared and adopted by the decision-making body. If Staff finds that a project may have a significant effect on the environment, it shall recommend that an EIR be prepared and certified by the decision-making body.

5.22 FINAL DETERMINATION.

The Board of Directors shall have the final responsibility for determining whether an EIR, Negative Declaration or Mitigated Negative Declaration shall be required for any project. The Board of Directors' determination shall be final and conclusive on all persons, including Responsible Agencies and Trustee Agencies, except as provided in Section 15050(c) of the State CEQA Guidelines. Additionally, in the event the Board of Directors has delegated authority to a subsidiary board or official to approve a project, the Board of Directors also hereby delegates to that subsidiary board or official the authority to make all necessary CEQA determinations, including whether an EIR, Negative Declaration, Mitigated Negative Declaration or exemption shall be required for any project. A subsidiary board or official's CEQA determination shall be subject to appeal consistent with the Agency's established procedures for appeals.

(Reference: Pub. Resources Code, § 21151.)

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6. NEGATIVE DECLARATION

6.01 DECISION TO PREPARE A NEGATIVE DECLARATION.

A Negative Declaration (Form "E") shall be prepared for a project subject to CEQA when the Initial Study shows that there is no substantial evidence in light of the whole record that the project may have a significant or potentially significant adverse effect on the environment. (See Local Guidelines Sections 11.65 and 11.71.)

(Reference: State CEQA Guidelines, § 15070(a).)

6.02 DECISION TO PREPARE A MITIGATED NEGATIVE DECLARATION.

A Mitigated Negative Declaration (Form "E") shall be prepared for a project subject to CEQA when the Initial Study identifies potentially significant effects on the environment, but:

(a) The project applicant has agreed to revise the project or the Agency can revise the project to avoid these significant effects or to mitigate the effects to a point where it is clear that no significant effects would occur; or
(b) There is no substantial evidence in light of the whole record before the Agency that the revised project may have a significant effect.

It is insufficient to require an applicant to adopt mitigation measures after final adoption of the Mitigated Negative Declaration or to state that mitigation measures will be recommended on the basis of a future study. The Agency must know the measures at the time the Mitigated Negative Declaration is adopted in order for them to be evaluated and accepted as adequate mitigation. Evidence of agreement by the applicant to such mitigation should be in the record prior to public review. Except where noted, the procedural requirements for the preparation and approval of a Negative Declaration and Mitigated Negative Declaration are the same.

(Reference: State CEQA Guidelines, § 15070(b).)

6.03 CONTRACTING FOR PREPARATION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The Agency, when acting as Lead Agency, is responsible for preparing all documents required pursuant to CEQA. The documents may be prepared by Staff or by private consultants pursuant to a contract with the Agency, but they must be the Agency's product and reflect the independent judgment of the Agency.

6.04 NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

When, based upon the Initial Study, it is recommended to the decision-making body that a Negative Declaration or Mitigated Negative Declaration be adopted, a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (Form "D") shall be prepared. In addition to being provided to the public through the means set forth in Local Guidelines Section 6.07, this Notice shall also be provided to:

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(a) Each Responsible and Trustee Agency;
(b) Any other federal, state, or local agency that has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.16;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or area-wide significance, to any transportation agencies or public agencies which have major local arterials or public transit facilities within five (5) miles of the project site or freeways, highways, or rail transit service within ten (10) miles of the project site which could be affected by the project; and

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, to the California Department of Water Resources;

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the Agency to receive these Notices;
(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria of Local Guidelines Section 6.05, to the specified military services contact;
(e) For certain projects that involve the construction or alteration of a facility anticipated to include hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 6.06, to any potentially affected school district;
(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.11 (regarding mandatory preparation of EIR) (see also Local Guidelines Section 7.27), to the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and
(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, notice shall be provided to the agricultural and farm agencies and organizations specified in Health and Safety Code section 33333.3.

The Notice of Intent must also be posted to the Lead Agency's website, if any. (Pub. Resources Code, § 21092.2(d).) Additionally, for a project of statewide, regional, or area-wide significance, the Lead Agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.

A copy of the proposed Negative Declaration or Mitigated Negative Declaration and the Initial Study shall be attached to the Notice of Intent to Adopt that is sent to every Responsible Agency and Trustee Agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.

The public review period for a Negative Declaration or Mitigated Negative Declaration shall not be less than twenty (20) days; the public review period shall be at least thirty (30) days where the Negative Declaration or Mitigated Negative Declaration is for a proposed project where

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(1) a state agency is the lead agency, a responsible agency, or a trustee agency; (2) a state agency otherwise has jurisdiction by law with respect to the project; or (3) the proposed project is of sufficient statewide, regional, or area-wide significance as determined pursuant to State CEQA Guidelines section 15206. The Lead Agency shall give notice of the public review period by filing and posting a Notice of Intent to Adopt a Negative Declaration (Form "D") with the County Clerk before commencement of the public review period; where a public review period of at least 30 days is required, the Lead Agency shall also electronically submit the Notice of Intent to the State Clearinghouse. (Pub. Resources Code, § 21091.)

For purposes of calculating the length of the public review period, the last day of the public review period cannot fall on a weekend, a legal holiday, or other day on which the lead agency's offices are closed.[1] (Reference: *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 708.)

The Agency requires requests for notices to be in writing and to be renewed annually. If the Agency is not otherwise required by CEQA or another regulation to provide notice, the Agency may charge a fee for providing notices to individuals or organizations that have submitted written requests to receive such notices, unless the request is made by another public agency.

If the Negative Declaration or Mitigated Negative Declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the period of review and comment by state agencies. (See Local Guidelines Section 6.10.) Day one of the state agency review period shall be the date that the State Clearinghouse distributes the Negative Declaration or Mitigated Negative Declaration to state agencies.

The Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall contain the following information:

(a) The period during which comments shall be received;
(b) The date, time and place of any public meetings or hearings on the proposed project;
(c) A brief description of the proposed project and its location;
(d) The address where copies of the proposed Negative Declaration or Mitigated Negative Declaration and all documents incorporated by reference in the proposed Negative Declaration or Mitigated Negative Declaration are available for review;
(e) A description of how the proposed Negative Declaration or Mitigated Negative Declaration can be obtained in electronic format;
(f) The Environmental Protection Agency ("EPA") list on which the proposed project site is located, if applicable, and the corresponding information from the applicant's statement (see Local Guidelines Section 2.05); and
(g) The significant effects on the environment, if any, anticipated as a result of the proposed project.

[1] A public agency's "offices are closed" for purposes of this section on days in which the agency is formally closed for business (for example, due to a weekend, a legal holiday, or a formal furlough affecting the entire office). A public agency's office is not considered closed for purposes of this section where the agency's office may be physically closed, but the agency is nonetheless open for business and is operating remotely or virtually (for example, in response to the Covid-19 pandemic).

(Reference: Pub. Resources Code, §§ 21082.1, 21091, 21161; State CEQA Guidelines, §§ 15072, 15105, 15205.)

6.05 PROJECTS AFFECTING MILITARY SERVICES; DEPARTMENT OF DEFENSE NOTIFICATION.

CEQA imposes additional requirements to provide notice to potentially affected military agencies when:

(a) The project meets one of the following three criteria:

(1) The project includes a general plan amendment;

(2) The project is of statewide, regional, or area-wide significance; or

(3) The project relates to a public use airport or certain lands surrounding a public use airport; and

(b) A "military service" (defined in Section 11.44 of these Local Guidelines) has provided its contact office and address and notified the Lead Agency of the specific boundaries of a "low-level flight path" (defined in Section 11.38 of these Local Guidelines), "military impact zone" (defined in Section 11.43 of these Local Guidelines), or "special use airspace" (defined in Section 11.69 of these Local Guidelines).

When a project meets these requirements, the Agency must provide the military service's designated contact with a copy of the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration that has been prepared for the project, unless the project involves the remediation of lands contaminated with hazardous wastes and meets certain other requirements. (Reference: Pub. Resources Code, §§21080.4 and 21092; Health & Safety Code, §§ 25300, et seq., 25396, and 25187.)

The Agency must provide the military service with sufficient notice of its intent to adopt a Negative Declaration or Mitigated Negative Declaration to ensure that the military service has no fewer than twenty (20) days to review the documents before they are approved, provided that the military service shall have a minimum of thirty (30) days to review the environmental documents if the documents have been submitted to the State Clearinghouse.

(Reference: State CEQA Guidelines, §§ 15105(b), 15190.5(c).)

6.06 SPECIAL FINDINGS REQUIRED FOR FACILITIES THAT MAY EMIT HAZARDOUS AIR EMISSIONS NEAR SCHOOLS.

Special procedural rules apply to projects involving the construction or alteration of a facility within one-quarter mile of a school/schools when: (1) the facility might reasonably be anticipated to emit hazardous air emissions or to handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the threshold specified in Health and Safety Code section 25532(j), and (2) the emissions or substances may pose a health or safety hazard to persons who would attend or would be employed at the

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school. If the project meets both of those criteria, a Lead Agency may not approve a Negative Declaration or a Mitigated Negative Declaration unless both of the following have occurred:

(a) The Lead Agency consulted with the affected school district or districts having jurisdiction over the school regarding the potential impact of the project on the school; and
(b) The school district(s) was given written notification of the project not less than thirty (30) days prior to the proposed approval of the Negative Declaration.

When the Agency is considering the adoption of a Negative Declaration or Mitigated Negative Declaration for a project that meets these criteria, it can satisfy this requirement by providing the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration, the proposed Negative Declaration or Mitigated Negative Declaration, and the Initial Study to the potentially affected school district at least thirty (30) days before the decision-making body will consider the adoption of the Negative Declaration or Mitigated Negative Declaration. See also Local Guidelines Section 6.04.

Implementation of this Guideline shall be consistent with the definitions and terms utilized in State CEQA Guidelines section 15186.

6.07 CONSULTATION WITH CALIFORNIA NATIVE AMERICAN TRIBES.

Prior to the release of a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration for a project, the Lead Agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if:

(a) The California Native American tribe requested to the Lead Agency, in writing, to be informed by the Lead Agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe; and

(b) The California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. The California Native American tribe shall designate a lead contact person when responding to the Lead Agency. If a lead contact is not designated by the California Native American tribe, or it designates multiple lead contact people, the Lead Agency shall defer to the individuals listed on the contact list maintained by the Native American Heritage Commission. Consultation is defined in Local Guidelines Section 11.11.

To expedite the requirements of this section, the Native American Heritage Commission shall assist the Lead Agency in identifying the California American Native tribes that are traditionally and culturally affiliated with the project area.

Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the Lead Agency shall provide formal notification to the designated contact of, or a trial representative of, traditionally and culturally affiliated California Native America tribes that have requested notice, which shall be accomplished by at least one written notification that includes a brief description of the proposed project and its location, the Lead Agency contact information, and a notification that the California Native

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American tribe has 30 days to request consultation. Where the application for a housing development project is deemed to be complete on or after March 4, 2020 and before December 31, 2021, the California Native American tribe shall have 60 days to respond to the Lead Agency and request consultation. (Reference: Gov. Code, § 65583(i).)

The Lead Agency shall begin the consultation process within 30 days of receiving a California Native American tribe's request for consultation.

If consultation is requested, the parties may propose mitigation measures, including those set forth in Public Resources Code section 21084.3, capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommend to the Lead Agency.

The consultation shall be considered concluded when either of the following occurs:

(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

The California Native American tribe is not limited in its ability to submit information to the lead agency regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the impacts. Additionally, the lead agency or project proponent is not limited in its ability to incorporate changes and additions to the project as a result of the consultation, even if not legally required.

(Reference: Pub. Resources Code, §§ 21080.3.1, 21080.3.2.)

6.08 IDENTIFICATION OF TRIBAL CULTURAL RESOURCES AND PROCESSING OF INFORMATION AFTER CONSULTATION WITH THE CALIFORNIA NATIVE AMERICAN TRIBE

After consultation with the California Native American tribe listed above in Local Guidelines Section 6.07, any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the Mitigated Negative Declaration and in an adopted mitigation monitoring and reporting program, if the mitigation measures are determined to avoid or lessen the proposed project's impacts on tribal cultural resources, and if the mitigation measures are enforceable.

If a project may have a significant impact on a tribal cultural resource, the Lead Agency's Mitigated Negative Declaration shall discuss both of the following:

(a) Whether the proposed project has a significant impact on an identified tribal cultural resource;

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(b) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to during the consultation, avoid or substantially lessen the impact on the identified tribal cultural resource.

Any information provided regarding the location, description and use of the tribal cultural resource that is submitted by a California Native American tribe during the environmental review process shall not be included in the Negative Declaration or Mitigated Negative Declaration or otherwise disclosed by the Lead Agency or any other public agency to the public, consistent with Government Code section 7927.005, and State CEQA Guidelines section 15120(d), without the prior consent of the tribe that provided the information. If the Lead Agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the Negative Declaration or Mitigated Negative Declaration unless the tribe provides consent, in writing, to the disclosure of some or all of the information to the public. This does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the Negative Declaration or the Mitigated Negative Declaration.

The exchange of confidential information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the Lead Agency, the California Native American tribe, the project applicant, or the project applicant's agent is not prohibited by Public Resources Code section 21082.3. The project applicant and the project applicant's legal advisers must use a reasonable degree of care and maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to tribal cultural resources and shall not disclose to a third party confidential information regarding the cultural resource unless the California Native American tribe providing the information consents in writing to the public disclosure of such information.

Public Resources Code section 21082.3 does not prevent a Lead Agency or other public agency from describing the information in general terms in the Negative Declaration or Mitigated Negative Declaration so as to inform the public of the basis of the Lead Agency's or other public agency's decision without breaching the confidentiality required. In addition, a Lead Agency may adopt a Mitigated Negative Declaration for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:

(a) The consultation process between the California Native American tribe and the Lead Agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.

(b) The California Native American tribe has requested consultation pursuant to Public Resources Code section 21080.3.1 and has failed to provide comments to the Lead agency, or otherwise failed to engage, in the consultation process.

(c) The Lead Agency has complied with subdivision (d) of Section 21080.3.1 of the Public Resources Code and the California Native American tribe has failed to request consultation within 30 days.

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If substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource but the decision-makers do not include the mitigation measures recommended by the staff in the Mitigated Negative Declaration, or if there are no agreed upon mitigation measures at the conclusion of the consultation; or if no consultation has occurred, the Lead Agency must still consider the adoption of feasible mitigation.

(Reference: Pub. Resources Code, § 21082.3.)

6.09 SIGNIFICANT ADVERSE IMPACTS TO TRIBAL CULTURAL RESOURCES

Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. If the Lead Agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Public Resources Code section 21080.3.2 and as set forth in Local Guidelines Section 6.07, the following examples of mitigation measures, if feasible, may be considered to avoid or minimize the significant adverse impacts:

(a) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

(b) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

(1) Protecting the cultural character and integrity of the resource.

(2) Protecting the traditional use of the resource.

(3) Protecting the confidentiality of the resource.

(c) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

(d) Protecting the resource.

(Reference: Pub. Resources Code, § 21084.3.)

6.10 POSTING AND PUBLICATION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The Agency shall have a copy of the Notice of Intent to Adopt, the Negative Declaration or Mitigated Negative Declaration, and the Initial Study posted at the Agency's offices and on the Agency's website, if any, and shall make these documents available for public inspection. The Notice must be provided either twenty (20) or thirty (30) days prior to final adoption of the Negative Declaration or Mitigated Negative Declaration. The public review period for a Negative

Declaration or Mitigated Negative Declaration prepared for a project subject to state agency review, as set forth in Local Guidelines Section 6.11, must be circulated for at least as long as the review period established by the State Clearinghouse, usually no less than thirty (30) days. Under certain circumstances, a shortened review period of at least twenty (20) days may be approved by the State Clearinghouse as provided for in State CEQA Guidelines section 15105. See the Shortened Review Request Form "P." The state review period will commence on the date the State Clearinghouse distributes the document to state agencies. The State Clearinghouse will distribute the document within three (3) days of receipt if the Negative Declaration or Mitigated Negative Declaration is deemed complete.

The Notice must also be posted in the office of the Clerk in each county in which the project is located and must remain posted throughout the public review period. The County Clerk is required to post the Notice within twenty-four (24) hours of receiving it.

Notice shall be provided as stated in Local Guidelines Section 6.04. In addition, Notice of the Intent to Adopt shall be given to the last known name and address of all organizations and individuals who have previously requested notice; by posting the notice on the website of the lead agency; and by at least one of the following procedures:

(a) Publication at least once in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
(b) Posting of notice on and off site in the area where the project is to be located; or
(c) Direct mailing to owners and occupants of property contiguous to the project, as shown on the latest equalized assessment roll.

The Agency, when acting as Lead Agency, shall consider all comments received during the public review period for the Negative Declaration or Mitigated Negative Declaration. For a Negative Declaration or Mitigated Negative Declaration, the Agency is not required to respond in writing to comments it receives either during or after the public review period. However, the Agency may provide a written response to all comments if it will not delay action on the Negative Declaration or Mitigated Negative Declaration, since any comment received prior to final action on the Negative Declaration or Mitigated Negative Declaration can form the basis of a legal challenge. A written response that refutes the comment or adequately explains the Agency's action in light of the comment will assist the Agency in defending against a legal challenge. The Agency shall notify any public agency that comments on a Negative Declaration or Mitigated Negative Declaration of the public hearing or hearings, if any, on the project for which the Negative Declaration or Mitigated Negative Declaration was prepared.

(Reference: Pub. Resources Code, § 21092; State CEQA Guidelines, §§ 15072-15073.)

6.11 SUBMISSION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION TO STATE CLEARINGHOUSE.

A Negative Declaration or Mitigated Negative Declaration must be submitted to the State Clearinghouse, in an electronic form as required by the Office of Land Use and Climate Innovation

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("LCI"), regardless of whether the document must be circulated for review and comment by state agencies under State CEQA Guidelines section 15205 and 15206. The Negative Declaration or Mitigated Negative Declaration must be submitted via LCI's CEQA Submit website (https://ceqasubmit.lci.ca.gov/). The CEQA Submit website differentiates between environmental documents that do require review and comment by state agencies and those that do not. In particular, the website provides a "Local Review Period" tab for submitting documents that do not require review and comment by state agencies, and a "State Review Period" tab for submitting documents that do require review and comment by state agencies.

A Negative Declaration or Mitigated Negative Declaration must be submitted to the State Clearinghouse for review and comment by state agencies (i.e., a Negative Declaration or Mitigated Negative Declaration must be submitted through the CEQA Submit website under the "State Review Period" tab) in the following situations:

(a) The Negative Declaration or Mitigated Negative Declaration is prepared by a Lead Agency that is a state agency;
(b) The Negative Declaration or Mitigated Negative Declaration is prepared by a public agency where a state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project; or
(c) The Negative Declaration or Mitigated Negative Declaration is for a project identified in State CEQA Guidelines section 15206 as being of statewide, regional, or area-wide significance.

State CEQA Guidelines section 15206 identifies the following types of projects as being examples of projects of statewide, regional, or area-wide significance that require submission to the State Clearinghouse for circulation:

(1) Projects that have the potential to cause significant environmental effects beyond the city or county where the project would be located, such as:

    (a) Residential development of more than 500 units;
    (b) Commercial projects employing more than 1,000 persons or covering more than 500,000 square feet of floor space;
    (c) Office building projects employing more than 1,000 persons or covering more than 250,000 square feet of floor space;
    (d) Hotel or motel development of more than 500 rooms; or
    (e) Industrial projects housing more than 1,000 persons, occupying more than 40 acres of land, or covering more than 650,000 square feet of floor area;

(2) Projects for the cancellation of a Williamson Act contract covering 100 or more acres;

(3) Projects in one of the following Environmentally Sensitive Areas:

    (a) Lake Tahoe Basin;
    (b) Santa Monica Mountains Zone;
    (c) Sacramento-San Joaquin River Delta;
    (d) Suisun Marsh;

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(e) Coastal Zone, as defined by the California Coastal Act;
(f) Areas within one-quarter mile of a river designated as wild and scenic; or
(g) Areas within the jurisdiction of the San Francisco Bay Conservation and Development Commission;

(4) Projects that would affect sensitive wildlife habitats or the habitats of any rare, threatened, or endangered species;

(5) Projects that would interfere with water quality standards; and

(6) Projects that would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

A Negative Declaration or Mitigated Negative Declaration may also be submitted to the State Clearinghouse for circulation if a state agency has special expertise with regard to the environmental impacts involved.

The public review period for a Negative Declaration or a Mitigated Negative Declaration shall not be less than twenty (20) days. The review period, however, shall be at least thirty (30) days if the Negative Declaration or Mitigated Negative Declaration is for a proposed project where a state agency is the lead agency, a responsible agency, or a trustee agency; a state agency otherwise has jurisdiction by law with respect to the project; or the proposed project is of sufficient statewide, regional, or areawide significance as determined pursuant to the guidelines certified and adopted pursuant to State CEQA Guidelines section 15206. When the Negative Declaration or Mitigated Negative Declaration is submitted to the State Clearinghouse for state agency review, the review period begins (day one) on the date that the State Clearinghouse distributes the Negative Declaration or Mitigated Negative Declaration to state agencies. The State Clearinghouse is required to distribute the Negative Declaration or Mitigated Negative Declaration to state agencies within three (3) working days from the date the State Clearinghouse receives the document, as long as the Negative Declaration or Mitigated Negative Declaration is complete when submitted to the State Clearinghouse. If the document submitted to the State Clearinghouse is not complete, the State Clearinghouse must notify the Lead Agency. The review period for the public and all other agencies may run concurrently with the state agency review period established by the State Clearinghouse, but the public review period cannot conclude before the state agency review period does. The review period for the public shall be at least as long as the review period established by the State Clearinghouse.

A shorter review period by the State Clearinghouse for a Negative Declaration or Mitigated Negative Declaration can be requested by the decision-making body. The shortened review period shall not be less than twenty (20) days. Such a request must be made in writing by the Lead Agency to LCI. The decision-making body may designate by resolution or ordinance an individual authorized to request a shorter review period. (See Form "P"). Any approval of a shortened review period must be given prior to, and reflected in, the public notice. However, a shortened review period shall not be approved by LCI for any proposed project of statewide, regional or areawide environmental significance, as defined by State CEQA Guidelines section 15206.

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When the Lead Agency completes its Negative Declaration or Mitigated Negative Declaration for a proposed project, the Lead Agency must also cause a Notice of Completion (Form "H") to be filed with the Office of Land Use and Climate Innovation via its CEQA Submit website. The Notice of Completion should briefly identify the project, indicate that an environmental document has been prepared for the project, and identify the project location by latitude and longitude.

The Lead Agency must post the Notice of Intent, Notice of Completion, and Negative Declaration or Mitigated Negative Declaration on its website, if any.

(Reference: Pub. Resources Code, §§ 21082.1, 21161; State CEQA Guidelines, §§ 15205, 15206.)

6.12 SPECIAL NOTICE REQUIREMENTS FOR WASTE- AND FUEL-BURNING PROJECTS.

For any project that involves the burning of municipal waste, hazardous waste, or refuse-derived fuel (such as tires) and that does not require an EIR, as defined in Local Guidelines Section 5.11, a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall be given to all organizations and individuals who have previously requested it and shall also be given by all three of the procedures listed in Local Guidelines Section 6.07. In addition, Notice shall be given by direct mailing to the owners and occupants of property within one-quarter mile of any parcel or parcels on which such a project is located.

These notice requirements apply only to those projects described in Local Guidelines Section 5.11. These notice requirements do not preclude the Agency from providing additional notice by other means if desired.

(Reference: Pub. Resources Code, § 21092(c).)

6.13 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

Under specific circumstances a city or county acting as Lead Agency must consult with the public water system that will supply the project to determine whether the public water system can adequately supply the water needed for the project. As a Responsible Agency, the Agency should be aware of these requirements. See Local Guidelines Section 5.16 for more information on these requirements.

(Reference: State CEQA Guidelines, § 15155.)

6.14 CONTENT OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

A Negative Declaration must be prepared directly by or under contract to the Agency and should generally resemble Form "E." It shall contain the following information:

(a) A brief description of the project proposed, including any commonly used name for the project;
(b) The location of the project and the name of the project proponent;

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(c) A finding that the project as proposed will not have a significant effect on the environment; and
(d) An attached copy of the Initial Study documenting reasons to support the finding.

For a Mitigated Negative Declaration, feasible mitigation measures included in the project to substantially lessen or avoid potentially significant effects must be fully enforceable through permit conditions, agreements, or other measures. Such permit conditions, agreements, and measures must be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law.

The proposed Negative Declaration or Mitigated Negative Declaration must reflect the independent judgment of the Agency.

(Reference: State CEQA Guidelines, § 15071.)

6.15 TYPES OF MITIGATION.

The following is a non-exhaustive list of potential types of mitigation the Agency may consider:

(a) Avoidance;
(b) Preservation;
(c) Rehabilitation or replacement. Replacement may be on-site or off-site depending on the particular circumstances; and/or
(d) Participation in a fee program.

(Reference: State CEQA Guidelines, § 15370.)

6.16 ADOPTION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

Following the publication, posting or mailing of the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration, but not before the expiration of the applicable twenty (20) or thirty (30) day public review period, the Negative Declaration or Mitigated Negative Declaration may be presented to the decision-making body at a regular or special meeting. Prior to adoption, the Agency shall independently review and analyze the Negative Declaration or Mitigated Negative Declaration and find that the Negative Declaration or Mitigated Negative Declaration reflects the independent judgment of the Agency.

If new information is added to the Negative Declaration or Mitigated Negative Declaration after public review, the Agency should determine whether recirculation is warranted. (See Local Guidelines Section 6.19). If the decision-making body finds that the project will not have a significant effect on the environment, it shall adopt the Negative Declaration or Mitigated Negative Declaration. If the decision-making body finds that the proposed project may have a significant effect on the environment that cannot be mitigated or avoided, it shall order the preparation of a Draft EIR and the filing of a Notice of Preparation of a Draft EIR.

When adopting a Negative Declaration or Mitigated Negative Declaration, the Agency shall specify the location and custodian of the documents or other material that constitute the

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record of proceedings upon which it based its decision. If adopting a Negative Declaration for a project that may emit hazardous air emissions within one-quarter mile of a school and that meets the other requirements of Local Guidelines Section 6.06, the decision-making body must also make the findings required by Local Guidelines Section 6.06.

As Lead Agency, the Agency may charge a non-elected official or body with the responsibility of independently reviewing the adequacy of and adopting a Negative Declaration or a Mitigated Negative Declaration. Any final CEQA determination made by a non-elected decisionmaker, however, is appealable to the Agency's Board of Directors within either (a) the time period set forth in the Agency's established process to appeal the non-elected decisionmaker's CEQA determination; or, if no such process exists, (2) ten (10) days of the non-elected decisionmaker's determination. If the non-elected decisionmaker's CEQA determination is not timely appealed as set forth herein, the non-elected decisionmaker's determination shall be final.

(Reference: State CEQA Guidelines, § 15074.)

6.17 MITIGATION REPORTING OR MONITORING PROGRAM FOR MITIGATED NEGATIVE DECLARATION.

When adopting a Mitigated Negative Declaration pursuant to Local Guidelines Section 6.13, the Agency shall adopt a reporting or monitoring program to assure that mitigation measures, which are required to mitigate or avoid significant effects on the environment, will be fully enforceable through permit conditions, agreements, or other measures and implemented by the project proponent or other responsible party in a timely manner, in accordance with conditions of project approval. The Agency shall also specify the location and the custodian of the documents that constitute the record of proceedings upon which it based its decision. There is no requirement that the reporting or monitoring program be circulated for public review; however, the Agency may choose to circulate it for public comments along with the Mitigated Negative Declaration. The mitigation measures required to mitigate or avoid significant effects on the environment must be adopted as conditions of project approval.

This reporting or monitoring program shall be designed to assure compliance during the implementation or construction of a project and shall otherwise comply with the requirements described in Local Guidelines Section 7.38. If a Responsible Agency or Trustee Agency has required that certain conditions be incorporated into the project, the Agency may request that agency to prepare and submit a proposed reporting or monitoring program. The Agency shall also require that, prior to the close of the public review period for a Mitigated Negative Declaration (see Local Guidelines Section 6.04), the Responsible or Trustee Agency submit detailed performance objectives for mitigation measures, or refer the Agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the Agency by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

Local agencies have the authority to levy fees sufficient to pay for this program. Therefore, the Agency can charge the project proponent a fee to cover actual costs of program processing and implementation.

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Transportation information resulting from the reporting or monitoring program required to be adopted by the Agency shall be submitted to the regional transportation planning agency where the project is located and to the Department of Transportation for a project of statewide, regional or area-wide significance according to State CEQA Guidelines section 15206. The transportation planning agency and the Department of Transportation are required by law to adopt guidelines for the submittal of these reporting or monitoring programs, so the Agency may wish to tailor its submittal to such guidelines.

(Reference: State CEQA Guidelines, §§ 15074, 15097.)

6.18 APPROVAL OR DISAPPROVAL OF PROJECT.

At the time of adoption of a Negative Declaration or Mitigated Negative Declaration, the decision-making body may consider the project for purposes of approval or disapproval. Prior to approving the project, the decision-making body shall consider the Negative Declaration or Mitigated Negative Declaration, together with any written comments received and considered during the public review period, and shall approve or disapprove the Negative Declaration or Mitigated Negative Declaration. In making a finding as to whether there is any substantial evidence that the project will have a significant effect on the environment, the factors listed in Local Guidelines Section 5.08 should be considered. (See Local Guidelines Section 6.06 for approval requirements for facilities that may emit hazardous pollutants or that may handle extremely hazardous substances within one-quarter mile of a school site.)

(Reference: State CEQA Guidelines, § 15092.)

6.19 RECIRCULATION OF A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

A Negative Declaration or Mitigated Negative Declaration must be recirculated when the document must be substantially revised after the public review period but prior to its adoption. A "substantial revision" occurs when the Agency has identified a new and avoidable significant effect for which mitigation measures or project revisions must be added in order to reduce the effect to a level of insignificance, or when the Agency determines that the proposed mitigation measures or project revisions will not reduce the potential effects to less than significant and new measures or revisions must be required.

Recirculation is not required under the following circumstances:

(a) Mitigation measures are replaced with equal or more effective measures, and the Agency makes a finding to that effect;
(b) New project revisions are added after circulation of the Negative Declaration or Mitigated Negative Declaration or in response to written or oral comments on the project's effects, but the revisions do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect;
(c) Measures or conditions of project approval are added after circulation of the Negative Declaration or Mitigated Negative Declaration, but the measures or conditions are not required by CEQA, do not create new significant environmental effects, and are not necessary to mitigate an avoidable significant effect; or

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(d) New information is added to the Negative Declaration or Mitigated Declaration which merely clarifies, amplifies, or makes insignificant modifications to the Negative Declaration or Mitigated Negative Declaration.

If, after preparation of a Negative Declaration or Mitigated Negative Declaration, the Agency determines that the project requires an EIR, it shall prepare and circulate the Draft EIR for consultation and review and advise reviewers in writing that a proposed Negative Declaration or Mitigated Declaration had previously been circulated for the project.

(Reference: State CEQA Guidelines, § 15073.5.)

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

After final approval of a project for which a Negative Declaration or Mitigated Negative Declaration has been prepared, Staff shall cause to be prepared, filed, and posted a Notice of Determination (Form "F"). The Notice of Determination shall contain the following information:

(a) An identification of the project, including the project title as identified on the proposed Negative Declaration or Mitigated Negative Declaration, location, and the State Clearinghouse identification number for the proposed Negative Declaration or Mitigated Negative Declaration if the Notice of Determination is filed with the State Clearinghouse;
(b) For private projects, identification of the person undertaking a project that is supported, 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 from one or more public agencies;
(c) A brief description of the project;
(d) The name of the Agency and the date on which the Agency approved the project;
(e) The determination of the Agency that the project will not have a significant effect on the environment;
(f) A statement that a Negative Declaration or Mitigated Negative Declaration was adopted pursuant to the provisions of CEQA;
(g) A statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted; and
(h) The address where a copy of the Negative Declaration or Mitigated Negative Declaration may be examined.

The Notice of Determination shall be filed within five (5) working days of project approval with both (1) the Clerk of each county in which the project will be located; and (2) the State Clearinghouse of the Office of Land Use and Climate Innovation.

The Agency must also post the Notice of Determination on its website. Such electronic notice is in addition to the posting requirements of the State CEQA Guidelines and the Public Resources Code. The Clerk must post the Notice of Determination within twenty-four (24) hours of receipt. The Notice must be posted in the office of the Clerk for a minimum of thirty (30) days. Thereafter, the Clerk shall return the notice to the Agency with a notation of the period it was posted. The Agency shall retain the notice for not less than twelve (12) months. For projects with

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more than one phase, Staff shall file a Notice of Determination for each phase requiring a discretionary approval.

The filing and posting of the Notice of Determination with the County Clerk usually starts a thirty (30) day statute of limitations on court challenges to the approval under CEQA. When separate notices are filed for successive phases of the same overall project, the thirty (30) day statute of limitations to challenge the subsequent phase begins to run when the subsequent notice is filed. Failure to file the Notice may result in a one hundred eighty (180) day statute of limitations.

(Reference: State CEQA Guidelines, § 15075.)

6.21 ADDENDUM TO NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The Agency may prepare an addendum to an adopted Negative Declaration or Mitigated Negative Declaration if only minor technical changes or additions are necessary. The Agency may also prepare an addendum to an adopted Negative Declaration or Mitigated Negative Declaration when none of the conditions calling for a subsequent Negative Declaration or Mitigated Negative Declaration have occurred. (See Local Guidelines Section 6.22 below.) An addendum need not be circulated for public review but can be attached to the adopted Negative Declaration or Mitigated Negative Declaration. The Agency shall consider the addendum with the adopted Negative Declaration or Mitigated Negative Declaration prior to project approval.

(Reference: State CEQA Guidelines, § 15164.)

6.22 SUBSEQUENT NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

When a Negative Declaration or Mitigated Negative Declaration has been adopted for a project, or when an EIR has been certified, no subsequent Negative Declaration, Mitigated Negative Declaration, or EIR shall be prepared for that project unless the Lead Agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(a) Substantial changes are proposed in the project which will require major revisions of the previous EIR, Negative Declaration, or Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(b) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR, Negative Declaration, or Mitigated Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified or the Negative Declaration was adopted which shows any of the following:

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(1) The project will have one or more significant effects not discussed in the previous EIR or Negative Declaration;

(2) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(3) Mitigation measure(s) or alternative(s) previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents declined to adopt the mitigation measure(s) or alternative(s); or

(4) Mitigation measure(s) or alternative(s) which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure(s) or alternative(s).

The Agency, as Lead Agency, would then determine whether a Subsequent EIR, Supplemental EIR, Subsequent Negative Declaration, Subsequent Mitigated Negative Declaration, or Addendum would be applicable. Subsequent Negative Declarations and Mitigated Negative Declarations must be given the same notice and public review period as other Negative Declarations. The Subsequent Negative Declaration shall state where the previous document is available and can be reviewed.

(Reference: State CEQA Guidelines, § 15162.)

6.23 PRIVATE PROJECT COSTS.

For private projects, the person or entity proposing to carry out the project shall bear all costs incurred by the Agency in preparing the Initial Study and in preparing and filing the Negative Declaration or Mitigated Negative Declaration and Notice of Determination.

6.24 FILING FEES FOR PROJECTS THAT AFFECT WILDLIFE RESOURCES.

At the time a Notice of Determination for a Negative Declaration or Mitigated Negative Declaration is filed with the County or Counties in which the project is located, a fee of $3,043.75, or the then applicable fee, shall be paid to the Clerk for projects that will adversely affect fish or wildlife resources. These fees are collected by the Clerk on behalf of DFW pursuant to Fish and Game Code section 711.4.

Only one filing fee is required for each project unless the project is tiered or phased and separate environmental documents are prepared. (Fish & Game Code section 711.4(g).) For projects where Responsible Agencies file separate Notices of Determination, only the Lead Agency is required to pay the fee.

Note: County Clerks are authorized to charge a documentary handling fee for each project in addition to the Fish and Game Code fees specified above. Refer to the Index in the Staff Summary to help determine the correct total amount of fees applicable to the project.

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For private projects, the Agency may pass these costs on to the project applicant.

Fish and Game Code fees may be waived for projects with "no effect" on fish or wildlife resources or for certain projects undertaken by the DFW and implemented through a contract with a non-profit entity or local government agency; however, the Lead Agency must obtain a form showing that the DFW has determined that the project will have "no effect" on fish and wildlife. (Fish and Game Code section 711.4(c)(2)(A)). Projects that are statutorily or categorically exempt from CEQA are also not subject to the filing fee, and do not require a no effect determination. (State CEQA Guidelines sections 15260 through 15333; Fish and Game Code section 711.4(d)(1)). The applicable DFW Regional Office's environmental review and permitting staff are responsible for determining whether a project within their region will qualify for a no effect determination and if the CEQA filing fee will be waived.

The request should be submitted when the CEQA document is released for public review, or as early as possible in the public comment period. Documents submitted in digital format are preferred (e.g. compact disk). If insufficient documentation is submitted to DFW for the proposed project, a no effect determination will not be issued.

If the Agency believes that a project for which it is Lead Agency will have "no effect" on fish or wildlife resources, it should contact the appropriate DFW Regional Office. The project's CEQA document may need to be provided to the appropriate DFW Regional Office along with a written request. Documentation submitted to the appropriate DFW Regional Office should set forth facts in support of the fee exemption. Previous examples of projects that have qualified for a fee exemption include: minor zoning changes that did not lead to or allow new construction, grading, or other physical alterations to the environment; and minor modifications to existing structures, including addition of a second story to single or multi-family residences.

The fee exemption requirement that the project have "no" impact on fish or wildlife resources is more stringent than the former requirement that a project have only "de minimis" effects on fish or wildlife resources. DFW may determine that a project would have no effect on fish and wildlife if all of the following conditions apply:

- The project would not result in or have the potential to result in harm, harassment, or take of any fish and/or wildlife species.

- The project would not result in or have the potential to result in direct or indirect destruction, ground disturbance, or other modification of any habitat that may support fish and/or wildlife species.

- The project would not result in or have the potential to result in the removal of vegetation with potential to support wildlife.

- The project would not result in or have the potential to result in noise, vibration, dust, light, pollution, or an alteration in water quality that may affect fish and/or wildlife directly or from a distance.

- The project would not result in or have the potential to result in any interference with the movement of any fish and/or wildlife species.

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Any request for a fee exemption should include the following information:

(1) the name and address of the project proponent and applicant contact information;

(2) a brief description of the project and its location;

(3) site description and aerial and/or topographic map of the project site;

(4) State Clearinghouse number or county filing number;

(5) a statement that an Initial Study has been prepared by the Agency to evaluate the project's effects on fish and wildlife resources, if any; and

(6) a declaration that, based on the Agency's evaluation of potential adverse effects on fish and wildlife resources, the Agency believes the project will have no effect on fish or wildlife.

If insufficient documentation is submitted to DFW for the proposed project, a no effect determination will not be issued. (A sample Request for Fee Exemption is attached as Form "L".) DFW will review the Agency's finding, and if DFW agrees with the Agency's conclusions, DFW will provide the Agency with written confirmation. The Agency should retain DFW's determination as part of the administrative record; the Agency is required to file a copy of this determination with the County after project approval and at the time of filing of the Notice of Determination.

The Agency must have written confirmation of DFW's finding of "no impact" at the time the Agency files its Notice of Determination with the County. The County cannot accept the Notice of Determination unless it is accompanied by the appropriate fee or a written no effect determination from DFW.

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7. ENVIRONMENTAL IMPACT REPORT

7.01 DECISION TO PREPARE AN EIR.

An EIR shall be prepared whenever there is substantial evidence in light of the whole record which supports a fair argument that the project may have a significant effect on the environment. (See Local Guidelines Sections 11.67 and 11.73.) The record may include the Initial Study or other documents or studies prepared to assess the project's environmental impacts.

(Reference: Pub. Resources Code, § 21151.)

7.02 CONTRACTING FOR PREPARATION OF EIRS.

If an EIR is prepared under a contract with the Agency, the contract must be executed within forty-five (45) days from the date on which the Agency sends a Notice of Preparation. The Agency may take longer to execute the contract if the project applicant and the Agency mutually agree to an extension of the 45-day time limit. (Reference: Pub. Resources Code, § 21151.5.)

The EIR prepared under contract must be the Agency's product. Staff, together with such consultant help as may be required, shall independently review and analyze the EIR to verify its accuracy, objectivity and completeness prior to presenting it to the decision-making body. The EIR made available for public review must reflect the independent judgment of the Agency. Staff may require such information and data from the person or entity proposing to carry out the project as Staff deems necessary for completion of the EIR. (Reference: State CEQA Guidelines, §§ 15084, 15090.)

7.03 NOTICE OF PREPARATION OF DRAFT EIR.

After determining that an EIR will be required for a proposed project, the Lead Agency shall prepare and submit a Notice of Preparation (Form "G") to the Office of Land Use and Climate Innovation through its CEQA Submit website and to each of the following:

(a) Each Responsible Agency and Trustee Agency involved with the project;
(b) Any other federal, state, or local agency which has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.16;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or area-wide significance, to any transportation agencies or public agencies which have major local arterials or public transit facilities within five (5) miles of the project site or freeways, highways, or rail transit service within ten (10) miles of the project site which could be affected by the project; and

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources;

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(c) The last known name and address of all organizations and individuals who have previously filed a written request with the Agency to receive these Notices;
(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria in Local Guidelines Section 7.04, the specified military services contact;
(e) For certain projects that involve the construction or alteration of a facility anticipated to emit hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 7.36, any potentially affected school district;
(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.11 (See also Local Guidelines Section 7.27), the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and
(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, the agricultural and farm agencies and organizations specified in Health and Safety Code section 33333.3.

Additionally, for a project of statewide, regional, or area-wide significance, the Lead Agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.

The Notice of Preparation must also be filed and posted in the office of the Clerk in each county in which the project is located for thirty (30) days. The County Clerk must post the Notice within twenty-four (24) hours of receipt.

When submitting the Notice of Preparation to LCI, a Notice of Completion (Form "H") should be used as a cover sheet. Responsible and Trustee Agencies, the State Clearinghouse, and the state agencies contacted by the State Clearinghouse have thirty (30) days to respond to the Notice of Preparation in writing via certified mail, email, or an equivalent procedure. Agencies that do not respond within thirty (30) days shall be deemed not to have any comments on the Notice of Preparation.

At a minimum, the Notice of Preparation shall include:

(a) A description of the project;
(b) The location of the project indicated either on an attached map (preferably a copy of the USGS 15' or 7½' topographical map identified by quadrangle name) or by a street address and cross street in an urbanized area;
(c) The probable environmental effects of the project;
(d) The name and address of the consulting firm retained to prepare the Draft EIR, if applicable; and
(e) The Environmental Protection Agency ("EPA") list on which the proposed site is located, if applicable, and the corresponding information from the applicant's statement. (See Local Guidelines Section 2.05.)

(Reference: Pub. Resources Code, § 21080.4; State CEQA Guidelines, § 15082.)

7.04 SPECIAL NOTICE REQUIREMENTS FOR AFFECTED MILITARY AGENCIES

CEQA imposes additional requirements to provide notice to potentially affected military agencies when:

(a) A "military service" (defined in Section 11.44 of these Local Guidelines) has provided the Agency with its contact office and address and notified the Agency of the specific boundaries of a "low-level flight path" (defined in Section 11.38 of these Local Guidelines), "military impact zone" (defined in Section 11.43 of these Local Guidelines), or "special use airspace" (defined in Section 11.69 of these Local Guidelines); and

(b) The project meets one of the following criteria:

(1) The project is within the boundaries specified pursuant to subsection (a) of this guideline;

(2) The project includes a general plan amendment;

(3) The project is of statewide, regional, or area-wide significance; or

(4) The project relates to a public use airport or certain lands surrounding a public use airport.

When a project meets these requirements, the Agency must provide the military service's designated contact with any Notice of Preparation, and/or Notice of Availability of Draft EIRs that have been prepared for a project, unless the project involves the remediation of lands contaminated with hazardous wastes and meets certain other requirements.

The Agency must provide the military service with sufficient notice of its intent to certify an EIR to ensure that the military service has no fewer than thirty (30) days to review the document; or forty-five (45) days to review the environmental documents before they are approved if the documents have been submitted to the State Clearinghouse.

It should be noted that the effect, or potential effect, a project may have on military activities does not itself constitute an adverse effect on the environment pursuant to CEQA.

(Reference: Pub. Resources Code, §§ 21080.4, 21092; Health & Safety Code, §§ 25300, et seq., 25396, 25187; State CEQA Guidelines, § 15082(a).)

7.05 ENVIRONMENTAL LEADERSHIP DEVELOPMENT PROJECT.

Under certain circumstances, a project applicant may choose to apply to the Governor of the State of California to have the project certified as an Environmental Leadership Development Project. A project may qualify as an Environmental Leadership Development Project if it is one of the following:

(1) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that meets the following standards:

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- The project is certified as Leadership in Energy and Environmental Design (LEED) gold or better by the United States Green Building Council; and

- The project, where applicable, achieves a 15 percent greater standard for transportation efficiency than comparable projects; and

- The project is located on an infill site; and

- For a project that is within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the infill project shall be 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 has accepted a metropolitan planning organization's determination, under subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(2) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.

(3) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.

(4) A housing development project—i.e., a project that entails either residential units only; mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; or transitional housing or supportive housing—that meets all of the following conditions:

- The housing development project is located on an infill site.

- For a housing development project that is located within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, 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 has accepted a metropolitan planning organization's determination, under subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

- Notwithstanding paragraph (1) of subdivision (a) of Section 21183, the housing development project will result in a minimum investment of fifteen million

dollars ($15,000,000), but less than one hundred million dollars ($100,000,000), in California upon completion of construction.

- At least 15 percent of the housing development project is dedicated as housing that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Upon completion of a housing development project that is qualified under this paragraph and is certified by the Governor, the lead agency or applicant of the project shall notify the Office of Land Use and Climate Innovation of the number of housing units and affordable housing units established by the project. Notwithstanding the foregoing, if a local agency has adopted an inclusionary zoning ordinance that establishes a minimum percentage for affordable housing within the jurisdiction in which the housing development project is located that is higher than 15 percent, the percentage specified in the inclusionary zoning ordinance shall be the threshold for affordable housing.

- Except for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code, no part of the housing development project shall be used for a rental unit for a term shorter than 30 days, or designated for hotel, motel, bed and breakfast inn, or other transient lodging use. Moreover, no part of the housing development project shall be used for manufacturing or industrial uses.

The Governor may certify a leadership project for streamlining before the lead agency certifies an EIR for the project if various conditions set forth in Public Resources Code section 21182 are met. The conditions include but are not limited to the following: (1) except as set forth above, the project will result in a minimum investment of one hundred million dollars ($100,000,000) in California upon completion of construction; (2) the project creates high-wage, highly skilled jobs that pay prevailing wages and living wages, provide construction jobs and permanent jobs for Californians, helps reduce unemployment, and promotes apprenticeship training; and (3) the project will not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation.

If the Governor certifies a project as an Environmental Leadership Development Project, any lawsuit challenging the project—including any potential appeals to the court of appeal or the California Supreme Court—must be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the trial court.

This section shall remain in effect until January 1, 2026. This section does not comprehensively set forth the rules governing Environmental Leadership Development projects. For more information, please see Chapter 6.5 of the Public Resources Code, starting with Public Resources Code section 21178.

7.06 PREPARATION OF DRAFT EIR.

The Lead Agency is responsible for preparing a Draft EIR. The Lead Agency may begin preparation of the Draft EIR without awaiting responses to the Notice of Preparation. However,

information communicated to the Lead Agency not later than thirty (30) days after receipt of the Notice of Preparation shall be included in the Draft EIR.

(Reference: State CEQA Guidelines, § 15084.)

7.07 CONSULTATION WITH CALIFORNIA NATIVE AMERICAN TRIBES.

Prior to the release of a Draft EIR for a project, the Lead Agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if:

(a) The California Native American tribe requested to the Lead Agency, in writing, to be informed by the Lead Agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe; and

(b) The California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. The California Native American tribe shall designate a lead contact person when responding to the Lead Agency. If a lead contact is not designated by the California Native American tribe, or if it designates multiple lead contact people, the Lead Agency shall defer to the individuals listed on the contact list maintained by the Native American Heritage Commission. Consultation is defined in Local Guidelines Section 11.11.

To expedite the requirements of this section, the Native American Heritage Commission shall assist the Lead Agency in identifying the California American Native tribes that are traditionally and culturally affiliated with the project area.

Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the Lead Agency shall provide formal notification to the designated contact of, or a trial representative of, traditionally and culturally affiliated California Native America tribes that have requested notice, which shall be accomplished by at least one written notification that includes a brief description of the proposed project and its location, the Lead Agency contact information, and a notification that the California Native American tribe has 30 days to request consultation.

The Lead Agency shall begin the consultation process within 30 days of receiving a California Native American tribe's request for consultation.

If consultation is requested, the parties may propose mitigation measures, including those set forth in Public Resources Code section 21084.3, capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommend to the lead agency.

The consultation shall be considered concluded when either of the following occurs:

(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

The California Native American tribe is not limited in its ability to submit information to the Lead Agency regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the impacts. Additionally, the Lead Agency or project proponent is not limited in its ability to incorporate changes and additions to the project as a result of the consultation, even if not legally required.

(Reference: Pub. Resources Code, §§ 21080.3.1, 21080.3.2.)

7.08 IDENTIFICATION OF TRIBAL CULTURAL RESOURCES AND PROCESSING OF INFORMATION AFTER CONSULTATION WITH THE CALIFORNIA NATIVE AMERICAN TRIBE

After consultation with the California Native American tribe listed above in Local Guidelines Section 7.07, any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the EIR and in an adopted mitigation monitoring and reporting program, if the mitigation measures are determined to avoid or lessen the proposed project's impacts on tribal cultural resources, and if the mitigation measures are enforceable.

If a project may have a significant impact on a tribal cultural resource, the Lead Agency's EIR shall discuss both of the following:

(a) Whether the proposed project has a significant impact on an identified tribal cultural resource;

(b) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to during the consultation, avoid or substantially lessen the impact on the identified tribal cultural resource.

Any information provided regarding the location, description and use of the tribal cultural resource that is submitted by a California Native American tribe during the environmental review process shall not be included in the EIR or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code section 7927.005, and State CEQA Guidelines section 15120(d), without the prior consent of the tribe that provided the information. If the Lead Agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the EIR unless the tribe provides consent, in writing, to the disclosure of some or all of the information to the public. This does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the EIR.

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The exchange of confidential information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the Lead Agency, the California Native American tribe, the project applicant, or the project applicant's agent is not prohibited by Public Resources Code section 21082.3. The project applicant and the project applicant's legal advisers must use a reasonable degree of care and maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to tribal cultural resources and shall not disclose to a third party confidential information regarding the cultural resource unless the California Native American tribe providing the information consents in writing to the public disclosure of such information.

Public Resources Code section 21082.3 does not prevent a Lead Agency or other public agency from describing the information in general terms in the EIR so as to inform the public of the basis of the Lead Agency's or other public agency's decision without breaching the confidentiality required. In addition, a Lead Agency may certify an EIR for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:

(a) The consultation process between the California Native American tribe and the Lead Agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.

(b) The California Native American tribe has requested consultation pursuant to Public Resources Code section 21080.3.1 and has failed to provide comments to the Lead Agency, or otherwise failed to engage, in the consultation process.

(c) The Lead Agency has complied with subdivision (d) of Section 21080.3.1 of the Public Resources Code and the California Native American tribe has failed to request consultation within 30 days.

If substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource but the decision-makers do not include the mitigation measures recommended by the staff in the Draft EIR, or if there are no agreed upon mitigation measures at the conclusion of the consultation, or if no consultation has occurred, the Lead Agency must still consider the adoption of feasible mitigation.

(Reference: Pub. Resources Code, § 21082.3.)

7.09 SIGNIFICANT ADVERSE IMPACTS TO TRIBAL CULTURAL RESOURCES

Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. If the Lead Agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Public Resources Code section 21080.3.2 as set forth in Local Guidelines Section 7.07, the following examples of mitigation measures, if feasible, may be considered to avoid or minimize the significant adverse impacts:

(a) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural

context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

(b) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to the following:

(1) Protecting the cultural character and integrity of the resource.

(2) Protecting the traditional use of the resource.

(3) Protecting the confidentiality of the resource.

(c) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

(d) Protecting the resource.

(Reference: Pub. Resources Code, § 21084.3.)

7.10 CONSULTATION WITH OTHER AGENCIES AND PERSONS.

To expedite consultation in response to the Notice of Preparation, the Lead Agency, a Responsible Agency, or a project applicant may request a meeting among the agencies involved to assist in determining the scope and content of the environmental information that the involved agencies may require. For any project that may affect highways or other facilities under the jurisdiction of the State Department of Transportation, the Department of Transportation can request a scoping meeting. When acting as Lead Agency, the Agency must convene the meeting as soon as possible but no later than thirty (30) days after a request is made. When acting as a Responsible Agency, the Agency should make any requests for consultation as soon as possible after receiving a Notice of Preparation.

Prior to completion of the Draft EIR, the Lead Agency shall consult with each Responsible Agency and any public agency that has jurisdiction by law over the project.

When acting as a Lead Agency, the Agency may fulfill this obligation by distributing the Notice of Preparation in compliance with Local Guidelines Section 7.03 and soliciting the comments of Responsible Agencies, Trustee Agencies, and other affected agencies. The Agency may also consult with any individual who has special expertise with respect to any environmental impacts involved with a project. The Agency may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project, including any interested individuals and organizations of which the Agency is reasonably aware. The purpose of this consultation is to "scope" the EIR's range of analysis. When a Negative Declaration or Mitigated Negative Declaration will be prepared for a project, no scoping meeting need be held, although the Agency may hold one if it so chooses. For private projects, the Agency as Lead Agency may charge and collect from the applicant a fee not to exceed the actual cost of the consultations.

In addition to soliciting comments on the Notice of Preparation, the Lead Agency may be required to conduct a scoping meeting to gather additional input regarding the impacts to be analyzed in the EIR. The Lead Agency is required to conduct a scoping meeting when:

(a) The meeting is requested by a Responsible Agency, a Trustee Agency, the Office of Land Use and Climate Innovation, or a project applicant;
(b) The project is one of "statewide, regional or area wide significance" as defined in State CEQA Guidelines section 15206; or
(c) The project may affect highways or other facilities under the jurisdiction of the State Department of Transportation, and the Department of Transportation has requested a scoping meeting.

When acting as Lead Agency, the Agency shall provide notice of the scoping meeting to all of the following:

(a) Any county or city that borders on a county or city within which the project is located, unless the Agency has a specific agreement to the contrary with that county or city;
(b) Any Responsible Agency;
(c) Any public agency that has jurisdiction by law over the project;
(d) A transportation planning agency, or any public agency that has transportation facilities within its jurisdiction, that could be affected by the project; and
(e) Any organization or individual who has filed a written request for the notice.

The requirement for providing notice of a scoping meeting may be met by including the notice of the public scoping meeting in the public meeting notice.

Government Code section 65352 requires that before a legislative body may adopt or substantially amend a general plan, the planning agency must refer the proposed action to any city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action. CEQA allows that referral procedure to be conducted concurrently with the scoping meeting required pursuant to this section of the Local CEQA Guidelines.

For projects that are also subject to NEPA, a scoping meeting held pursuant to NEPA satisfies the CEQA scoping requirement as long as notice is provided to the agencies and individuals listed above, and in accordance with these Local Guidelines. (See Local Guideline 5.04 for a discussion of NEPA.)

The Agency shall call the scoping meeting as soon as possible but not later than 30 days after the meeting was requested. If the scoping meeting is being conducted concurrently with the procedure in Government Code section 65352 for the consideration of adoption or amendment of general plans, each entity receiving a proposed general plan or amendment of a general plan should have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified. The commenting entity may submit its comments at the scoping meeting.

A Responsible Agency or other public agency shall only make comments regarding those activities that are within its area of expertise or that are required to be carried out or approved by

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the Responsible Agency. These comments must be supported by specific documentation. Any mitigation measures submitted to the Agency by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

For projects of statewide, area-wide, or regional significance, consultation with transportation planning agencies or with public agencies that have transportation facilities within their jurisdictions shall be for the purpose of obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, overpasses, on-ramps, off-ramps, and rail transit services. Moreover, the Lead Agency should also consult with public transit agencies with facilities within one-half mile of the proposed project. Any transportation planning agency or public agency that provides information to the Lead Agency must be notified of, and provided with, copies of any environmental documents relating to the project.

(Reference: State CEQA Guidelines, §§ 15082, 15083.)

7.11 EARLY CONSULTATION ON PROJECTS INVOLVING PERMIT ISSUANCE.

When the project involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the Agency, upon request of the applicant, shall meet with the applicant regarding the range of actions, potential alternatives, mitigation measures and significant effects to be analyzed in depth in the EIR. The Agency may also consult with concerned persons identified by the applicant and persons who have made written requests to be consulted. Such requests for early consultation must be made not later than thirty (30) days after the Agency's decision to prepare an EIR.

7.12 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

For certain development projects, cities and counties must consult with water agencies. If the Agency is a water provider for the project, the city or county may request consultation with the Agency. (See Local Guidelines Sections 5.16 and 5.17 for more information on these requirements.)

(Reference: State CEQA Guidelines, § 15155.)

7.13 AIRPORT LAND USE PLAN.

When the Agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan, or, if such a plan has not been adopted, for a project within two (2) nautical miles of a public airport or public use airport, the Agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport or related safety hazards and noise problems.

(Reference: State CEQA Guidelines, § 15154.)

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7.14 GENERAL ASPECTS OF AN EIR.

Both a Draft and Final EIR must contain the information outlined in Local Guidelines Sections 7.17 and 7.18. Each element must be covered, and when elements are not separated into distinct sections, the document must state where in the document each element is covered.

The body of the EIR shall include summarized technical data, maps, diagrams and similar relevant information. Highly technical and specialized analyses and data should be included in appendices. Appendices may be prepared in separate volumes, but must be equally available to the public for examination. All documents used in preparation of the EIR must be referenced. An EIR shall not include "trade secrets," locations of archaeological sites and sacred lands, or any other information subject to the disclosure restrictions of the Public Records Act (Government Code section 7920.000, et seq.).

The EIR should discuss environmental effects in proportion to their severity and probability of occurrence. Effects dismissed in the Initial Study as clearly insignificant and unlikely to occur need not be discussed.

The Initial Study should be used to focus the EIR so that the EIR identifies and discusses only the specific environmental problems or aspects of the project that have been identified as potentially significant or important. A copy of the Initial Study should be attached to the EIR or included in the administrative record to provide a basis for limiting the impacts discussed.

The EIR shall contain a statement briefly indicating the reason for determining that various effects of a project that could possibly be considered significant were not found to be significant and consequently were not discussed in detail in the EIR. The Agency should also note any conclusion by it that a particular impact is too speculative for evaluation.

The EIR should omit unnecessary descriptions of projects and emphasize feasible mitigation measures and alternatives to projects.

7.15 USE OF REGISTERED CONSULTANTS IN PREPARING EIRS.

An EIR is not a technical document that can be prepared only by a registered consultant or professional. However, state statutes may provide that only registered professionals can prepare certain technical studies that will be used in an EIR, or that will control the detailed design, construction, or operation of the proposed project and that will be prepared in support of an EIR.

(Reference: State CEQA Guidelines, § 15149.)

7.16 INCORPORATION BY REFERENCE.

An EIR, Negative Declaration, or Mitigated Negative Declaration may incorporate by reference all or portions of another document that is a matter of public record or is generally available to the public. Any incorporated document shall be considered to be set forth in full as part of the text of the environmental document. When all or part of another document is incorporated by reference, that document shall be made available to the public for inspection at

the Agency's offices. The environmental document shall state where incorporated documents will be available for inspection.

When incorporation by reference is used, the incorporated part of the referenced document shall be briefly summarized, if possible, or briefly described if the data or information cannot be summarized. The relationship between the incorporated document and the EIR, Negative Declaration, or Mitigated Negative Declaration shall be described. When information from an environmental document that has previously been reviewed through the state review system ("State Clearinghouse") is incorporated by the Agency, the state identification number of the incorporated document should be included in the summary or text of the EIR.

(Reference: State CEQA Guidelines, § 15150.)

7.17 STANDARDS FOR ADEQUACY OF AN EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information that enables them to make a decision that takes into account the environmental consequences of the project. The evaluation of environmental effects need not be exhaustive, but must be within the scope of what is reasonably feasible. The EIR should be written and presented in such a way that it can be understood by governmental decision-makers and members of the public. A good faith effort at completeness is necessary. The adequacy of an EIR is assessed in terms of what is reasonable in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a Lead Agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters, but CEQA does require the Lead Agency to make a good faith, reasoned response to timely comments raising significant environmental issues.

There is no need to unreasonably delay adoption of an EIR in order to include results of studies in progress, even if those studies will shed some additional light on subjects related to the project.

(Reference: State CEQA Guidelines, § 15151.)

7.18 FORM AND CONTENT OF EIR.

The text of the EIR should normally be less than 150 pages. For proposals of unusual scope or complexity, the EIR may be longer than 150 pages but should normally be less than 300 pages. The required contents of an EIR are set forth in Sections 15122 through 15132 of the State CEQA Guidelines. In brief, the EIR must contain:

(a) A table of contents or an index;
(b) A brief summary of the proposed project, including each significant effect with proposed mitigation measures and alternatives, areas of known controversy and issues to be resolved including the choice among alternatives, how to mitigate the significant effects and whether there are any significant and unavoidable impacts (generally, the summary should be less than fifteen (15) pages);

(c) A description of the proposed project, including its underlying purpose and a list of permit and other approvals required to implement the project (see Local Guidelines Section 7.24 regarding analysis of future project expansion);

(d) A description of the environmental setting, which includes the project's physical environmental conditions from both a local and regional perspective at the time the Notice of Preparation is published, or if no Notice of Preparation is published, at the time environmental analysis begins. (State CEQA Guidelines section 15125.) This environmental setting will normally constitute the baseline physical conditions by which the Lead Agency determines whether an impact is significant. However, the Agency, when acting as Lead Agency, may choose any baseline that is appropriate as long as the Agency's choice of baseline is supported by substantial evidence;

(e) A discussion of any inconsistencies between the proposed project and applicable general, specific and regional plans. Such plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans;

(f) A description of the direct and indirect significant environmental impacts of the proposed project explaining which, if any, can be avoided or mitigated to a level of insignificance, indicating reasons that various possible significant effects were determined not to be significant and denoting any significant effects that are unavoidable or could not be mitigated to a level of insignificance. Direct and indirect significant effects shall be clearly identified and described, giving due consideration to both short-term and long-term effects;

(g) Potentially significant energy implications of a project must be considered to the extent relevant and applicable to the project (see Local Guidelines Section 5.20);

(h) An analysis of a range of alternatives to the proposed project that could feasibly attain the project's objectives as discussed in Local Guidelines Section 7.23;

(i) A description of any significant irreversible environmental changes that would be involved in the proposed action should it be implemented if, and only if, the EIR is being prepared in connection with:

(1) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(2) The adoption by a Local Agency Formation Commission of a resolution making determinations; or

(3) A project that will be subject to the requirement for preparing an Environmental Impact Statement pursuant to NEPA;

(j) An analysis of the growth-inducing impacts of the proposed action. The discussion should include ways in which the project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Growth-inducing impacts may include the estimated energy consumption of growth induced by the project;

(k) A discussion of any significant, reasonably anticipated future developments and the cumulative effects of all proposed and anticipated action as discussed in Local Guidelines Section 7.24;

(l) In certain situations, a regional analysis should be completed for certain impacts, such as air quality;

(m) A discussion of any economic or social effects, to the extent that they cause, or may be used to determine, significant environmental impacts;

(n) A statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and, therefore, were not discussed in the EIR;

(o) The identity of all federal, state or local agencies or other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization. To the fullest extent possible, the Agency should integrate CEQA review with these related environmental review and consultation requirements;

(p) A discussion of those potential effects of the proposed project on the environment that the Agency has determined are or may be significant. The discussion on other effects may be limited to a brief explanation as to why those effects are not potentially significant; and

(q) A description of feasible measures, as set forth in Local Guidelines Section 7.22, which could minimize significant adverse impacts.

(Reference: State CEQA Guidelines, §§ 15120-15148.)

7.19 CONSIDERATION AND DISCUSSION OF SIGNIFICANT ENVIRONMENTAL IMPACTS.

An EIR must identify and focus on the significant effects of the proposed project on the environment. In assessing the proposed project's potential impacts on the environment, the Agency should normally limit its examination to comparing changes that would result from the project as compared to the existing physical conditions in the affected area as they exist when the Notice of Preparation is published. If a Notice of Preparation is not published for the project, the Agency should compare the proposed project's potential impacts to the physical conditions that exist at the time environmental review begins. Direct and indirect significant effects of the project on the environment must be clearly identified and described, considering both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the project that may impact resources in the project area, such as water, historical resources, scenic quality, and public services. The EIR must also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area. If applicable, an EIR should also evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified on authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

If analysis of the project's energy use reveals that the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary use of energy, or wasteful use

of energy resources, the EIR shall mitigate that energy use. This analysis should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project. This analysis is subject to the rule of reason and shall focus on energy use that is caused by the project. This analysis may be included in related analyses of air quality, greenhouse gas emissions, transportation or utilities in the discretion of the Lead Agency.

The EIR must describe all significant impacts, including those that can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

The EIR must also discuss any significant irreversible environmental changes that would be caused by the project. For example, use of nonrenewable resources during the initial and continued phases of a project may be irreversible if a large commitment of such resources makes removal or nonuse thereafter unlikely. Additionally, irreversible commitment of resources may include a discussion of how the project preempts future energy development or future energy conservation. Irretrievable commitments of resources to the proposed project should be evaluated to assure that such current consumption is justified.

(Reference: Pub. Resources Code, § 21100.)

7.20 ENVIRONMENTAL SETTING

An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which the Lead Agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.

(1) Generally, the Lead Agency should describe 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, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, the 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. In addition, the Lead Agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.

(2) The Lead Agency may use projected future conditions (beyond the date of project operations) as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-

makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.

(3) An existing conditions baseline shall not include hypothetical conditions—such as those that might be allowed, but have never actually occurred, under existing permits or plans—as the baseline.

(State CEQA Guidelines, § 15125.)

7.21 ANALYSIS OF CUMULATIVE IMPACTS.

An EIR must discuss cumulative impacts when the project's incremental effect is "cumulatively considerable" as defined in Local Guidelines Section 11.13. When the Agency is examining a project with an incremental effect that is not "cumulatively considerable," it need not consider that effect significant, but must briefly describe the basis for this conclusion. A project's contribution may be less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure designed to alleviate the cumulative impact. When relying on a fee program or mitigation measure(s), the Agency must identify facts and analysis supporting its conclusion that the cumulative impact is less than significant.

The Agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program that provides specific requirements that will avoid or substantially lessen the cumulative problem in the geographic area in which the project is located. Such plans and programs may include, but are not limited to:

(1) Water quality control plans;

(2) Air quality attainment or maintenance plans;

(3) Integrated waste management plans;

(4) Habitat conservation plans;

(5) Natural community conservation plans; and/or

(6) Plans or regulations for the reduction of greenhouse gas emissions.

When relying on such a regulation, plan, or program, the Agency should explain how implementing the particular requirements of the plan, regulation or program will ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.

A cumulative impact consists of an impact that is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts that do not result in part from the project evaluated in the EIR.

The discussion of cumulative impacts in an EIR must focus on the cumulative impacts to which the identified other projects contribute, rather than on the attributes of other projects that do

not contribute to the cumulative impact. The discussion of significant cumulative impacts must include either of the following:

(1) A list of past, present, and probable future projects causing related or cumulative impacts including, if necessary, those projects outside the control of the Agency; or

(2) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or a plan for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Documents used in creating a summary of projections must be referenced and made available to the public.

When utilizing a list, as suggested above, factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined and the location and type of project. Location may be important, for example, when water quality impacts are involved since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

Public Resources Code section 21094 also states that if a Lead Agency determines that a cumulative effect has been adequately addressed in an earlier EIR, it need not be examined in a later EIR if the later project's incremental contribution to the cumulative effect is not cumulatively considerable. A cumulative effect has been adequately addressed in the prior EIR if:

(1) it has been mitigated or avoided as a result of the prior EIR; or

(2) the cumulative effect has been examined in a sufficient level of detail to enable the effect to be mitigated or avoided by site-specific revisions, the imposition of conditions, or other means in connection with the approval of the later project.

Public Resources Code section 21094 only applies to earlier projects that (1) are consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) are consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located and (3) are not subject to Public Resources Code section 21166.

If the Lead Agency determines that the cumulative effect has been adequately addressed in a prior EIR, the Lead Agency should clearly explain the basis for its determination in the current environmental documentation for the project.

The Agency should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(Reference: State CEQA Guidelines, § 15130.)

7.22 ANALYSIS OF MITIGATION MEASURES.

The discussion of mitigation measures in an EIR must distinguish between measures proposed by project proponents and other measures proposed by Lead, Responsible or Trustee Agencies. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

Where several measures are available to mitigate an impact, each should be disclosed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time 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 Lead 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. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be disclosed but in less detail than the significant effects of the project itself.

If a project includes a housing development, the Agency may not reduce the project's proposed number of housing units as a mitigation measure or project alternative if the Agency determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation without reducing the number of housing units.

Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design. Mitigation measures must also be consistent with all applicable constitutional requirements such as the "nexus" and "rough proportionality" standards—i.e., there must be an essential nexus between the mitigation measure and a legitimate governmental interest, and the mitigation measure must be "roughly proportional" to the impacts of the project.

Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of a historical resource will be conducted in a manner consistent with the Secretary of the Interior's "Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings" (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus not significant.

The Agency should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following must be considered and discussed in an EIR for a project involving an archaeological site:

(a) Preservation in place is the preferred manner of mitigating impacts to archaeological sites; and

(b) Preservation in place may be accomplished by, but is not limited to, the following:

(1) Planning construction to avoid archaeological sites;

(2) Incorporation of sites within parks, green space, or other open spaces;

(3) Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site; and/or

(4) Deeding the site into a permanent conservation easement.

When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to excavation. Such studies must be deposited with the California Historical Resources Regional Information Center.

Data recovery shall not be required for a historical resource if the Agency determines that existing testing or studies have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

(Reference: State CEQA Guidelines, § 15126.4.)

7.23 ANALYSIS OF ALTERNATIVES IN AN EIR.

The alternatives analysis must describe and evaluate the comparative merits of a range of reasonable alternatives to the project or to the location of the project which would feasibly attain most of the basic objectives of the project, but which would avoid or substantially lessen any of the significant effects of the project. An EIR need not consider every conceivable alternative to a project, and it need not consider alternatives that are infeasible. Rather, an EIR must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation.

Purpose of the Alternatives Analysis: An EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment. For this reason, a discussion of alternatives must focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effect of the project, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.

Selection of a Range of Reasonable Alternatives: The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects, even if those alternatives would be more costly or would impede to some degree the attainment of the project's objectives. The EIR should briefly describe the rationale for selecting the alternatives to

be discussed. The EIR should also identify any alternatives that were considered by the Lead Agency and rejected as infeasible during the scoping process, and it should briefly explain the reasons for rejecting those alternatives. Additional information explaining the choice of alternatives should be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (a) failure to meet most of the basic project objectives; (b) infeasibility; or (c) inability to avoid significant environmental impacts.

Evaluation of Alternatives: The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. The matrix may also identify and compare the extent to which each alternative meets project objectives. 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.

The Rule of Reason: The range of alternatives required in an EIR is governed by a "rule of reason" which courts have held means that an alternatives discussion must be reasonable in scope and content. Therefore, the EIR must set forth only those alternatives necessary to permit public participation, informed decision-making, and a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones the Agency determines could feasibly attain most of the basic objectives of the project. An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

Feasibility of Alternatives: The factors that may be taken into account when addressing the feasibility of alternatives include: site suitability; economic viability; availability of infrastructure; general plan consistency; other plans or regulatory limitations; jurisdictional boundaries (projects with a regionally significant impact should consider the regional context); and whether the proponent already owns the alternative site or can reasonably acquire, control or otherwise have access to the site. No one factor establishes a fixed limit on the scope of reasonable alternatives.

Alternative Locations: The first step in the alternative location analysis is to determine whether any of the significant effects of the project could be avoided or substantially lessened by putting the project in another location. This is the key question in this analysis. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

The second step in this analysis is to determine whether any of the alternative locations are feasible. If the Agency concludes that no feasible alternative locations exist, it must disclose its reasons, and it should include them in the EIR. When a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for a project with the same basic purpose, the Agency should review the previous document and incorporate the previous document by reference. To the extent the circumstances have remained substantially the

same with respect to an alternative, the EIR may rely on the previous document to help it assess the feasibility of the potential project alternative.

The "No Project" Alternative: The specific alternative of "no project" must be evaluated along with its impacts. The purpose of describing and analyzing the no project alternative is to allow decision-makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative may be different from the baseline environmental conditions. The no project alternative will be the same as the baseline only if it is identical to the existing environmental setting and the Lead Agency has chosen the existing environmental setting as the baseline.

A discussion of the "no project" alternative should proceed along one of two lines:

(a) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically, this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan; or

(b) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. This discussion would compare the environmental effects of the property remaining in its existing state against environmental effects that would occur if the project is approved. If disapproval of the project would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed.

After defining the "no project" alternative, the Agency should proceed to analyze the impacts of the "no project" alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the "no project" alternative is the environmentally superior alternative, the EIR must also identify another environmentally superior alternative among the remaining alternatives.

Remote or Speculative Alternatives: An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

(Reference: State CEQA Guidelines, § 15126.6.)

7.24 ANALYSIS OF FUTURE EXPANSION.

An EIR must include an analysis of the environmental effects of future expansion (or other similar future modifications) if there is credible and substantial evidence that:

(a) The future expansion or action is a reasonably foreseeable consequence of the initial project; and

(b) The future expansion or action is likely to change the scope or nature of the initial project or its environmental effects.

Absent these two circumstances, future expansion of a project need not be discussed. CEQA does not require speculative discussion of future development that is unspecific or uncertain. However, if future action is not considered now, it must be considered and environmentally evaluated before it is actually implemented.

(Reference: *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376, 396.)

7.25 NOTICE OF COMPLETION OF DRAFT EIR; NOTICE OF AVAILABILITY OF DRAFT EIR.

Notice of Completion. When the Draft EIR is completed, a Notice of Completion (Form "H") must be filed with the Office of Land Use and Climate Innovation ("LCI") in an electronic form via the LCI's CEQA Submit website, which is located at the following web address: https://ceqasubmit.lci.ca.gov/. The Notice of Completion shall contain:

(a) A brief description of the proposed project;
(b) The location of the proposed project including the proposed project's latitude and longitude;
(c) An address where copies of the Draft EIR are available and a description of how the Draft EIR can be provided in an electronic format; and
(d) The review period during which comments will be received on the Draft EIR.

The LCI has developed a model form Notice of Completion. Form H follows LCI's model. To ensure that the documents are accepted by LCI staff, this form should be used when documents are transmitted to State Clearinghouse.

Notice of Availability. At the same time it sends a Notice of Completion to LCI, the Agency shall provide public notice of the availability of the Draft EIR by distributing a Notice of Availability of Draft Environmental Impact Report (Form "K"). The Notice of Availability shall include at least the following information:

(a) A brief description of the proposed project and its location;
(b) The starting and ending dates for the review period during which the Agency will receive comments, the manner in which the Agency will receive those comments, and whether the review period has been shortened;
(c) The date, time, and place of any scheduled public meetings or hearings to be held by the Agency on the proposed project, if the Agency knows this information when it prepares the Notice;
(d) A list of the significant environmental effects anticipated as a result of the project;
(e) The address where copies of the EIR and all documents incorporated by reference in the EIR will be available for public review, and a description of how the Draft EIR can be obtained in electronic format. This location shall be readily accessible to the public during the Agency's normal working hours; and
(f) A statement indicating whether the project site is included on any list of hazardous waste facilities, land designated as hazardous waste property, or hazardous waste disposal site, and, if so, the information required in the Hazardous Waste and Substances Statement pursuant to Government Code section 65962.5.

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The Notice of Availability shall be provided to:

(a) Each Responsible and Trustee Agency;
(b) Any other federal, state, or local agency that has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.16;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or area-wide significance, any transportation agencies or public agencies that have major local arterials or public transit facilities within five (5) miles of the project site; or freeways, highways, or rail transit service within ten (10) miles of the project site that could be affected by the project;

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, the California Department of Water Resources; and

(5) For a general plan amendment, a project of statewide, regional, or area-wide significance, or a project that relates to a public use airport, to any "military service" (defined in Section 11.44 of these Local Guidelines) that has provided the Agency with its contact office and address and notified the Agency of the specific boundaries of a "low-level flight path" (defined in Section 11.38 of these Local Guidelines), "military impact zone" (defined in Section 11.43 of these Local Guidelines), or "special use airspace" (defined in Section 11.69 of these Local Guidelines);

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the Agency to receive these Notices;
(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria of Local Guidelines Section 7.04, the specified military services contact;
(e) For certain projects that involve the construction or alteration of a facility anticipated to emit hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 7.36, any potentially affected school district;
(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.11 (see also Local Guidelines Section 7.27), the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and
(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, notice and a copy of the Draft EIR shall be provided to the agricultural and farm agencies and organizations specified in Health and Safety Code section 33333.3.

The Agency requires requests for copies of these Notices to be in writing and to be renewed annually; moreover, the Agency may charge a fee for the reasonable cost of providing these Notices. A project will not be invalidated due to a failure to send a requested Notice provided there has been substantial compliance with these notice provisions.

Staff may also consult with and obtain comments from any person known to have special expertise or any other person or organization whose comments relative to the Draft EIR would be desirable.

Notice shall be given to the last known name and address of all organizations and individuals who have previously requested notice; by posting the notice on the website of the lead agency; and by at least one of the following procedures:

(a) Publication of the Notice of Completion and/or the Notice of Availability at least once in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
(b) Posting of the Notice of Completion and/or the Notice of Availability on and off site in the area where the project is to be located; or
(c) Direct mailing of the Notice of Completion and/or the Notice of Availability to owners and occupants of property contiguous to the project, as identified on the latest equalized assessment roll.

The Notice of Completion and Notice of Availability shall be posted in the office of the Clerk in each county in which the project is located for at least thirty (30) days. If the public review period for the Draft EIR is longer than thirty (30) days, the Agency may wish to leave the Notice posted until the public review period for the Draft EIR has expired.

Copies of the Draft EIR shall also be made available at the Agency office for review by members of the general public. The Agency may require any person obtaining a copy of the Draft EIR to reimburse the Agency for the actual cost of its reproduction. Copies of the Draft EIR should also be furnished to appropriate public library systems.

The Agency shall also post an electronic copy of the Notice of Completion, Notice of Availability, and Draft EIR on its website, if any.

(Reference: Pub. Resources Code, § 21082.1; State CEQA Guidelines, §§ 15085, 15087.)

7.26 SUBMISSION OF DRAFT EIR TO STATE CLEARINGHOUSE.

A Draft EIR must be submitted to the State Clearinghouse, at the same time as the Notice of Completion, in an electronic form as required by the Office of Land Use and Climate Innovation ("LCI"), regardless of whether the document must be circulated for review and comment by state agencies under State CEQA Guidelines section 15205 and 15206. The Draft EIR must be submitted via the LCI's CEQA Submit website (https://ceqasubmit.lci.ca.gov/). The CEQA Submit website differentiates between environmental documents that do require review and comment by state agencies and those that do not. In particular, the website provides a "Local Review Period" tab for submitting documents that do not require review and comment by state agencies, and a "State Review Period" tab for submitting documents that do require review and comment by state agencies.

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A Draft EIR must be submitted to the State Clearinghouse for review and comment by state agencies (i.e., the Draft EIR must be submitted through the CEQA Submit website under the "State Review Period" tab) in the following situations:

(a) A state agency is the Lead Agency for the Draft EIR;
(b) A state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law over resources potentially affected by the project; or
(c) The Draft EIR is for a project identified in State CEQA Guidelines section 15206 as being a project of statewide, regional, or area-wide significance.

State CEQA Guidelines section 15206 identifies the following types of projects as being examples of projects of statewide, regional, or area-wide significance that require submission to the State Clearinghouse for circulation:

(1) General plans, elements, or amendments for which an EIR was prepared;

(2) Projects that have the potential for causing significant environmental effects beyond the city or county where the project would be located, such as:

(a) Residential development of more than 500 units;
(b) Commercial projects employing more than 1,000 persons or covering more than 500,000 square feet of floor space;
(c) Office building projects employing more than 1,000 persons or covering more than 250,000 square feet of floor space;
(d) Hotel or motel development of more than 500 rooms; and
(e) Industrial projects housing more than 1,000 persons, occupying more than 40 acres of land, or covering more than 650,000 square feet of floor area;

(3) Projects for the cancellation of a Williamson Act contract covering more than 100 acres;

(4) Projects in one of the following Environmentally Sensitive Areas:

(a) Lake Tahoe Basin;
(b) Santa Monica Mountains Zone;
(c) Sacramento-San Joaquin River Delta;
(d) Suisun Marsh;
(e) Coastal Zone, as defined by the California Coastal Act;
(f) Areas within one-quarter mile of a river designated as wild and scenic; or
(g) Areas within the jurisdiction of the San Francisco Bay Conservation and Development Commission;

(5) Projects that would affect sensitive wildlife habitats or the habitats of any rare, threatened, or endangered species;

(6) Projects that would interfere with water quality standards; and

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(7) Projects that would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

A Draft EIR may also be submitted to the State Clearinghouse for review and comment by state agencies when a state agency has special expertise with regard to the environmental impacts involved.

Submission of the Draft EIR to the State Clearinghouse affects the timing of the public review period as set forth in Local Guidelines Section 7.28.

(Reference: Pub. Resources Code, § 21091; State CEQA Guidelines, §§ 15205, 15206.)

7.27 SPECIAL NOTICE REQUIREMENTS FOR WASTE- AND FUEL-BURNING PROJECTS.

For any waste-burning project, as defined in Local Guidelines Section 5.11, in addition to the notice requirements specified in Local Guidelines Sections 7.25 and 7.26, Notice of Availability of the Draft EIR shall be given by direct mailing or any other method calculated to provide delivery of the notice to the owners and occupants of property within one-fourth mile of any parcel or parcels on which the project is located.

(Reference: Pub. Resources Code, § 21092(c).)

7.28 TIME FOR REVIEW OF DRAFT EIR; FAILURE TO COMMENT.

A period of between thirty (30) and sixty (60) days from the filing of the Notice of Completion of the Draft EIR shall be allowed for review of and comment on the Draft EIR, except in unusual situations.

If the Draft EIR is for a proposed project where a state agency is the lead agency, a responsible agency, or a trustee agency; a state agency otherwise has jurisdiction by law with respect to the project; or the proposed project is of sufficient statewide, regional, or area-wide significance as determined pursuant to State CEQA Guidelines section 15206, the review period shall be at least forty-five (45) days (unless a shorter period is approved as set forth below), and the lead agency shall provide the document in an electronic form, as required by the LCI, to the State Clearinghouse for review and comment by state agencies.

For purposes of calculating the length of the public review period, the last day of the public review period cannot fall on a weekend, a legal holiday, or other day on which the lead agency's offices are closed.[2] (Reference: *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 708.)

If a state agency is a Responsible Agency, or if the Draft EIR is submitted to the State Clearinghouse for review and comment by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and

[2] A public agency's "offices are closed" for purposes of this section on days in which the agency is formally closed for business (for example, due to a weekend, a legal holiday, or a formal furlough affecting the entire office). A public agency's office is not considered closed for purposes of this section where the agency's office may be physically closed, but the agency is nonetheless open for business and is operating remotely or virtually (for example, in response to the Covid-19 pandemic).

the state agency review period may, but are not required to, begin and end at the same time. The state agency review period begins (day one) on the date that the State Clearinghouse distributes the Draft EIR to state agencies. The State Clearinghouse is required to distribute the Draft EIR to state agencies within three (3) working days from the date the State Clearinghouse receives the document, as long as the Draft EIR is complete when submitted to the State Clearinghouse. If the document submitted to the State Clearinghouse is not complete, the State Clearinghouse must notify the Lead Agency. The review period for the public and all other agencies may run concurrently with the state agency review period established by the State Clearinghouse.

Under certain circumstances, a shorter review period of the Draft EIR by the State Clearinghouse can be requested by the Agency; however, a shortened review period shall not be less than thirty (30) days for a Draft EIR. Any request for a shortened review period must be made in writing by the Agency to LCI. The Agency may designate a person to make these requests. The Agency must contact all Responsible and Trustee agencies and obtain their agreement prior to obtaining a shortened review period. (See the Shortened Review Request Form "P.") A shortened review period is not available for any proposed project of statewide, regional or area-wide environmental significance as determined pursuant to State CEQA Guidelines section 15206. Any approval of a shortened review period shall be given prior to, and reflected in, the public notices.

In the event a public agency, group, or person whose comments on a Draft EIR are solicited fails to comment within the required time period, it shall be presumed that such agency, group, or person has no comment to make, unless the Lead Agency has received a written request for a specific extension of time for review and comment and a statement of reasons for the request.

Continued planning activities concerning the proposed project, short of formal approval, may continue during the period set aside for review and comment on the Draft EIR.

(Reference: Pub. Resources Code, § 21091; State CEQA Guidelines, §§ 15203, 15205(d).)

7.29 PUBLIC HEARING ON DRAFT EIR.

CEQA does not require formal public hearings for certification of an EIR; public comments may be restricted to written communications. (However, a hearing is required to utilize the limited exemption for Transit Priority Projects as explained in Local Guidelines Section 3.15; to adopt a bicycle transportation plan as explained in Local Guidelines Section 3.23; and for certain other actions involving the replacement or deletion of mitigation measures under State CEQA Guidelines section 15074.1.) However, if the Agency provides a public hearing on its consideration of a project, the Agency should include the project's environmental review documents as one of the subjects of the hearing. Notice of the time and place of the hearing shall be given in a timely manner in accordance with any legal requirements applicable to the proposed project. Generally, the requirements of the Ralph M. Brown Act will provide the minimum requirements for the inclusion of CEQA matters on agendas and at hearings. (Gov. Code, § 54950 et seq.) At a minimum, agendas for meetings and hearings before commissions, boards, councils, and other agencies must be posted in a location that is freely accessible to members of the public at least seventy-two (72) hours prior to a regular meeting. The agenda must contain a brief general description of each item to be discussed and the time and location of the meeting. (Gov. Code,

§ 54954.2.) Additionally, any legislative body or its presiding officer must post an agenda for each regular or special meeting on the local agency's Internet Web site, if the local agency has one.

(Reference: State CEQA Guidelines, § 15202.)

7.30 RESPONSE TO COMMENTS ON DRAFT EIR.

The Lead Agency shall evaluate any comments on environmental issues received during the public review period for the Draft EIR and shall prepare a written response to those comments that raise significant environmental issues.

As stated below, the Agency, as Lead Agency, should also consider evaluating and responding to any comments received after the public review period. The written responses shall describe the disposition of any significant environmental issues that are raised in the comments. The responses may take the form of a revision of the Draft EIR, an attachment to the Draft EIR, or some other oral or written response that is adequate under the circumstances. If the Agency's position is at variance with specific recommendations or suggestions raised in the comment, the Agency's response must detail the reasons why such recommendations or suggestions were not accepted. The level of detail contained in the response, however, may correspond to the level of detail provided in the comment (i.e., responses to general comments may be general). A general response may be appropriate when a comment does not contain or specifically refer to readily available information, or does not explain the relevance of evidence submitted with the comment.

Moreover, the Agency shall respond to any specific suggestions for project alternatives or mitigation measures for significant impacts, unless such alternatives or mitigation measures are facially infeasible. The response shall contain recommendations, when appropriate, to alter the project as described in the Draft EIR as a result of an analysis of the comments received.

At least ten (10) days prior to certifying a Final EIR, the Lead Agency shall provide its proposed written response, either in printed copy or in an electronic format, to any public agency that has made comments on the Draft EIR during the public review period. The Agency, as Lead Agency, is not required to respond to comments received after the public review period. However, the Agency, as Lead Agency, should consider responding to all comments if it will not delay action on the Final EIR, since any comment received before final action on the EIR can form the basis of a legal challenge. A written response that addresses the comment or adequately explains the Agency's action in light of the comment may assist in defending against a legal challenge.

(Reference: State CEQA Guidelines, § 15088.)

7.31 PREPARATION AND CONTENTS OF FINAL EIR.

Following the receipt of any comments on the Draft EIR as required herein, such comments shall be evaluated by Staff and a Final EIR shall be prepared.

The Final EIR shall meet all requirements of Local Guidelines Section 7.18 and shall consist of the Draft EIR or a revision of the Draft, a section containing either verbatim or in summary the comments and recommendations received through the review and consultation

process, a list of persons, organizations and public agencies commenting on the Draft, and a section containing the responses of the Agency to the significant environmental points raised in the review and consultation process.

(Reference: State CEQA Guidelines, §§ 15089, 15132.)

7.32 RECIRCULATION WHEN NEW INFORMATION IS ADDED TO EIR.

When significant new information is added to the EIR after notice and consultation but before certification, the Lead Agency must recirculate the Draft EIR for another public review period. The term "information" can include changes in the project or environmental setting as well as additional data or other information.

New information is significant only when the EIR is changed in a way that would deprive the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of a project or a feasible way to mitigate or avoid such an effect, including a feasible project alternative, that the project proponents decline to implement. Recirculation is required, for example, when:

(1) New information added to an EIR discloses:

(a) A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented; or

(b) A significant increase in the severity of an environmental impact (unless mitigation measures are also adopted that reduce the impact to a level of insignificance); or

(c) A feasible project alternative or mitigation measure that clearly would lessen the significant environmental impacts of the project, but which the project proponents decline to adopt; or

(2) The Draft EIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation is not required when the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. If the revision is limited to a few chapters or portions of the EIR, the Agency as Lead Agency need only recirculate the chapters or portions that have been modified. A decision to not recirculate an EIR must be supported by substantial evidence in the record.

When the Agency determines to recirculate a Draft EIR, it shall give Notice of Recirculation (Form "M") to every agency, person, or organization that commented on the prior Draft EIR. The Notice of Recirculation must indicate whether new comments must be submitted and whether the Agency has exercised its discretion to require reviewers to limit their comments to the revised chapters or portions of the recirculated EIR. The Agency shall also consult again with those persons contacted pursuant to Local Guidelines Section 7.25 before certifying the EIR. When the EIR is substantially revised and the entire EIR is recirculated, the Agency may require that reviewers submit new comments and need not respond to those comments received during the earlier circulation period. In those cases, the Agency should advise reviewers that, although their

previous comments remain part of the administrative record, the final EIR will not provide a written response to those comments, and new comments on the revised EIR must be submitted. The Agency need only respond to those comments submitted in response to the revised EIR.

When the EIR is revised only in part and the Agency is recirculating only the revised chapters or portions of the EIR, the Agency may request that reviewers limit their comments to the revised chapters or portions. The Agency need only respond to: (1) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (2) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated.

When recirculating a revised EIR, either in whole or in part, the Agency must, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

(Reference: State CEQA Guidelines, § 15088.5.)

7.33 CERTIFICATION OF FINAL EIR.

Following the preparation of the Final EIR, Staff shall review the Final EIR and make a recommendation to the decision-making body regarding whether the Final EIR has been completed in compliance with CEQA, the State CEQA Guidelines and the Agency's Local Guidelines. The Final EIR and Staff recommendation shall then be presented to the decision-making body. The decision-making body shall independently review and consider the information contained in the Final EIR and determine whether the Final EIR reflects its independent judgment. Before it approves the project, the decision-making body must certify and find that: (1) the Final EIR has been completed in compliance with CEQA, the State CEQA Guidelines and the Agency's Local Guidelines; (2) the Final EIR was presented to the decision-making body and the decision-making body reviewed and considered the information contained in the Final EIR before approving the project; and (3) the Final EIR reflects the Agency's independent judgment and analysis.

Except in those cases in which the Board of Directors is the final decision-making body for the project, any interested person may appeal the certification or denial of certification of a Final EIR to the Board of Directors. Appeals must follow the procedures prescribed by the Agency.

(Reference: State CEQA Guidelines, § 15090.)

7.34 CONSIDERATION OF EIR BEFORE APPROVAL OR DISAPPROVAL OF PROJECT.

Once the decision-making body has certified the EIR, it may then proceed to consider the proposed project for purposes of approval or disapproval.

(Reference: State CEQA Guidelines, § 15092.)

7.35 FINDINGS.

The decision-making body shall not approve or carry out a project if a completed EIR identifies one or more significant environmental effects of the project unless it makes one or more of the following written findings for each such significant effect, accompanied by a brief explanation of the rationale supporting each finding. For impacts that have been identified as potentially significant, the possible findings are:

(a) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment as identified in the Final EIR, such that the impact has been reduced to a less-than-significant level;
(b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the Agency. Such changes have been, or can and should be, adopted by that other agency; or
(c) Specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the Final EIR. The decision-making body must make specific written findings stating why it has rejected an alternative to the project as infeasible.

The findings required by this Section shall be supported by substantial evidence in the record. Measures identified and relied on to mitigate environmental impacts identified in the EIR to below a level of significance should be expressly adopted or rejected in the findings. The findings should include a description of the specific reasons for rejecting any mitigation measures or project alternatives identified in the EIR that would reduce the significant impacts of the project. Any mitigation measures that are adopted must be fully enforceable through permit conditions, agreements, or other measures.

If any of the proposed alternatives could avoid or lessen an adverse impact for which no mitigation measures are proposed, the Agency shall analyze the feasibility of such alternative(s). If the project is to be approved without including such alternative(s), the Agency shall find that specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the alternatives identified in the Final EIR and shall list such considerations before such approval.

The decision-making body shall not approve or carry out a project as proposed unless: (1) the project as approved will not have a significant effect on the environment; or (2) the project's significant environmental effects have been eliminated or substantially lessened (as determined through one or more of the findings indicated above), and any remaining unavoidable significant effects have been found acceptable because of facts and circumstances described in a Statement of Overriding Considerations (see Local Guidelines Section 7.37). Statements in the Draft EIR or comments on the Draft EIR are not determinative of whether the project will have significant effects.

When making the findings required by this Section, the Agency as Lead Agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which it based its decision.

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(Reference: State CEQA Guidelines, § 15091.)

7.36 SPECIAL FINDINGS REQUIRED FOR FACILITIES THAT MAY EMIT HAZARDOUS AIR EMISSIONS NEAR SCHOOLS.

Special procedural rules apply to projects involving the construction or alteration of a facility within one-quarter mile of a school when: (1) the facility might reasonably be anticipated to emit hazardous air emissions or to handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the threshold specified in Health and Safety Code section 25532(j); and (2) the emissions or substances may pose a health or safety hazard to persons who would attend or would be employed at the school. If the project meets both of those criteria, the Lead Agency may not certify an EIR or approve a Negative Declaration or Mitigated Negative Declaration unless it makes a finding that:

(a) The Lead Agency consulted with the affected school district or districts having jurisdiction over the school regarding the potential impact of the project on the school; and
(b) The school district was given written notification of the project not less than thirty (30) days prior to the proposed certification of the EIR or approval of the Negative Declaration or Mitigated Negative Declaration.

Implementation of this Local Guideline shall be consistent with the definitions and terms utilized in State CEQA Guidelines section 15186.

Additionally, in its role as a Responsible Agency, the Agency should be aware that for projects involving the acquisition of a school site or the construction of a secondary or elementary school by a school district, the Negative Declaration, Mitigated Negative Declaration, or EIR prepared for the project may not be adopted or certified unless there is sufficient information in the entire record to determine whether any boundary of the school site is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

If it is determined that the project involves the acquisition of a school site that is within 500 feet of the edge of the closest traffic lane of a freeway, or other busy traffic corridor, the Negative Declaration, Mitigated Negative Declaration, or EIR may not be adopted or certified unless the school board determines, through a health risk assessment pursuant to Section 44360(b)(2) of the Health and Safety Code and after considering any potential mitigation measures, that the air quality at the proposed project site does not present a significant health risk to pupils.

(Reference: State CEQA Guidelines, § 15186.)

7.37 STATEMENT OF OVERRIDING CONSIDERATIONS.

Before a project that has unmitigated significant adverse environmental effects can be approved, the decision-making body must adopt a Statement of Overriding Considerations. If the decision-making body finds in the Statement of Overriding Considerations that specific benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

Accordingly, the Statement of Overriding Considerations allows the decision-making body to approve a project despite one or more unmitigated significant environmental impacts identified in the Final EIR. A Statement of Overriding Considerations can be made only if feasible project alternatives or mitigation measures do not exist to reduce the environmental impact(s) to a level of insignificance and the benefits of the project outweigh the adverse environmental effect(s). The feasibility of project alternatives or mitigation measures is determined by whether the project alternative or mitigation measure can be accomplished within a reasonable period of time, taking into account economic, environmental, social, legal and technological factors.

Project benefits that are appropriate to consider in the Statement of Overriding Considerations include the economic, legal, environmental, technological and social value of the project. The Agency may also consider region-wide or statewide environmental benefits.

Substantial evidence in the entire record must justify the decision-making body's findings and its use of the Statement of Overriding Considerations. If the decision-making body makes a Statement of Overriding Considerations, the Statement must be included in the record of the project approval and it should be referenced in the Notice of Determination.

(Reference: State CEQA Guidelines, § 15093.)

7.38 MITIGATION MONITORING OR REPORTING PROGRAM FOR EIR.

When making findings regarding an EIR, the Agency must do all of the following:

(a) Adopt a reporting or monitoring program to assure that mitigation measures that are required to mitigate or avoid significant effects on the environment will be implemented by the project proponent or other responsible party in a timely manner, in accordance with conditions of project approval;
(b) Make sure all conditions and mitigation measures are feasible and fully enforceable through permit conditions, agreements, or other measures. Such permit conditions, agreements, and measures must be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law; and
(c) Specify the location and the custodian of the documents which constitute the record of proceedings upon which the Agency based its decision in the resolution certifying the EIR.

There is no requirement that the reporting or monitoring program be circulated for public review; however, the Agency may choose to circulate it for public comments along with the Draft EIR. Any mitigation measures required to mitigate or avoid significant effects on the environment shall be adopted and made fully enforceable, such as by being imposed as conditions of project approval.

The adequacy of a mitigation monitoring program is determined by the "rule of reason." This means that a mitigation monitoring program does not need to provide every imaginable measure. It needs only to provide measures that are reasonably feasible and that are necessary to avoid significant impacts or to reduce the severity of impacts to a less-than-significant level.

The mitigation monitoring or reporting program shall be designed to assure compliance with the mitigation measures during the implementation and construction of the project. If a

Responsible Agency or Trustee Agency has required that certain conditions be incorporated into the project, the Agency may request that agency to prepare and submit a proposed reporting or monitoring program. The Agency shall also require that, prior to the close of the public review period for a Draft EIR, the Responsible or Trustee Agency submit detailed performance objectives for mitigation measures, or refer the Agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the Agency by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

When a project is of statewide, regional, or area-wide significance, any transportation information resulting from the reporting or monitoring program required to be adopted by the Agency shall be submitted to the regional transportation planning agency where the project is located and to the Department of Transportation. The transportation planning agency and the Department of Transportation are required by law to adopt guidelines for the submittal of these reporting or monitoring programs, so the Agency may wish to tailor its submittal to such guidelines.

Local agencies have the authority to levy fees sufficient to pay for this program. Therefore, the Agency may impose a program to charge project proponents fees to cover actual costs of program processing and implementation.

The Agency may delegate reporting or monitoring responsibilities to an agency or to a private entity that accepts the delegation; however, until mitigation measures have been completed, the Agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The Agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" is defined as a written compliance review that is presented to the Board or an authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. Reporting is suited to projects that have readily measurable or quantitative mitigation measures or that already involve regular review. "Monitoring" is generally an ongoing or periodic process of project oversight. Monitoring is suited to projects with complex mitigation measures that may exceed the expertise of the Agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

At its discretion, the Agency may adopt standardized policies and requirements to guide individually adopted programs.

Standardized policies or requirements for monitoring and reporting may describe, but are not limited to:

(a) The relative responsibilities of various departments within the Agency for various aspects of the program;
(b) The responsibilities of the project proponent;
(c) Guidelines adopted by the Agency to govern preparation of programs;

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(d) General standards for determining project compliance with the mitigation measures and related conditions of approval;
(e) Enforcement procedures for noncompliance, including provisions for administrative appeal; and/or
(f) A process for informing the Board and staff of the relative success of mitigation measures and using those results to improve future mitigation measures.

When a project is of statewide, regional, or area-wide importance, any transportation information generated by a mitigation monitoring or reporting program must be submitted to the transportation planning agency in the region where the project is located, as well as to the Department of Transportation.

(Reference: State CEQA Guidelines, § 15097.)

7.39 NOTICE OF DETERMINATION.

After approval of a project for which the Agency is the Lead Agency, Staff shall cause a Notice of Determination (Form "F") to be prepared, filed, and posted. The Notice of Determination shall include the following information:

(a) An identification of the project, including its common name, where possible, and its location. If the Notice of Determination is filed with the State Clearinghouse, the State Clearinghouse identification number for the draft EIR shall be provided.
(b) A brief description of the project;
(c) The Agency's name and the applicant's name (if any). If different from the applicant, the Notice of Determination shall further provide, if applicable, the identity of the person undertaking the project that is supported, 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 from one or more public agencies.
(d) The date when the Agency approved the project;
(e) Whether the project in its approved form with mitigation will have a significant effect on the environment;
(f) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA;
(g) Whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted;
(h) Whether findings were made and/or whether a Statement of Overriding Considerations was adopted for the project; and
(i) The address where a copy of the EIR (with comments and responses) and the record of project approval may be examined by the general public.

The Notice of Determination shall be filed within five (5) working days of project approval with both (1) the Clerk of each county in which the project will be located; and (2) the State Clearinghouse of the Office of Land Use and Climate Innovation. (To determine the fees that must be paid with the filing of the Notice of Determination, see Local Guidelines Section 7.42 and the Staff Summary of the CEQA Process.) The County Clerk is required to post the Notice of Determination within twenty-four (24) hours of receipt. The Notice must be posted in the office

of the Clerk for a minimum of thirty (30) days. Thereafter, the Clerk shall return the notice to the Agency with a notation of the period it was posted. The Agency shall retain the notice for not less than twelve (12) months.

The Agency, when acting as lead agency, must post its Notice of Determination for a project on its website, if any.

For projects with more than one phase, Staff shall file a Notice of Determination for each phase requiring a discretionary approval. The filing and posting of a Notice of Determination with the Clerk, and, if necessary, with the State Clearinghouse, usually starts a thirty (30) day statute of limitations on court challenges to the approval under CEQA. When separate notices are filed for successive phases of the same overall project, the thirty (30) day statute of limitation to challenge the subsequent phase begins to run when the second notice is filed. Failure to file the Notice may result in a one hundred eighty (180) day statute of limitations.

(Reference: Pub. Resources Code, §§ 21092.2, 21108; State CEQA Guidelines, § 15094.)

7.40 DISPOSITION OF A FINAL EIR.

The Agency shall file a copy of the Final EIR with the appropriate planning agency of any city or county where significant effects on the environment may occur. The Agency shall also retain one or more copies of the Final EIR as a public record for a reasonable period of time. Finally, for private projects, the Agency may require that the project applicant provide a copy of the certified Final EIR to each Responsible Agency.

(Reference: State CEQA Guidelines, § 15095.)

7.41 PRIVATE PROJECT COSTS.

For private projects, the person or entity proposing to carry out the project shall be charged a reasonable fee to recover the estimated costs incurred by the Agency in preparing, circulating, and filing the Draft and Final EIRs, as well as all publication costs incident thereto.

7.42 FILING FEES FOR PROJECTS THAT AFFECT WILDLIFE RESOURCES.

At the time a Notice of Determination for an EIR is filed with the County or Counties in which the project is located, a fee of $4,227.50then applicable fee, shall be paid to the Clerk for projects that will adversely affect fish or wildlife resources. These fees are collected by the Clerk on behalf of DFW.

Only one filing fee is required for each project unless the project is tiered or phased and separate environmental documents are prepared. For projects where Responsible Agencies file separate Notices of Determination, only the Lead Agency is required to pay the fee.

Note: County Clerks are authorized to charge a documentary handling fee for each project in addition to the Fish and Wildlife fees specified above. Refer to the Index in the Staff Summary to help determine the correct total amount of fees applicable to the project.

For private projects, the Agency should pass these costs on to the project applicant.

No fees are required for projects with "no effect" on fish or wildlife resources or for certain projects undertaken by the DFW and implemented through a contract with a non-profit entity or local government agency. (See Local Guidelines Section 6.24 for more information regarding a "no effect" determination.)

8. TYPES OF EIRS

8.01 EIRs Generally.

This chapter describes a number of examples of various EIRs tailored to different situations. All of these types of EIRs must meet the applicable requirements of Chapter 7 of these Local Guidelines.

8.02 Tiering.

(a) Tiering Generally.

"Tiering" refers to using the analysis of general matters contained in a previously certified broader EIR in later EIRs, Negative Declarations, or Mitigated Negative Declarations prepared for narrower projects. The later EIR, Negative Declaration, or Mitigated Negative Declaration may incorporate by reference the general discussions from the broader EIR and may concentrate solely on the issues specific to the later project.

An Initial Study shall be prepared for the later project and used to determine whether a previously certified EIR may be used and whether new significant effects should be examined. Tiering does not excuse the Agency from adequately analyzing reasonably foreseeable significant environmental effects of a project, nor does it justify deferring analysis to a later tier EIR, Negative Declaration, or Mitigated Negative Declaration. However, the level of detail contained in a first-tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed. When the Agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan, specific plan or community plan), the development of detailed, site-specific information may not be feasible. Such site-specific information can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(b) Identifying New Significant Impacts.

When assessing whether there is a new significant cumulative effect for purposes of a subsequent tier environmental document, the Lead Agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects.

A Lead Agency may use only a valid CEQA document as a first-tier document. Accordingly, the Agency, in its role as Lead Agency, should carefully review the first-tier environmental document to determine whether or not the statute of limitations for challenging the document has run. If the statute of limitations has not expired, the Agency should use the first-tier document with caution and pay careful attention to the legal status of the document. If the first-tier document is subsequently invalidated, any later environmental document may also be defective.

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(c) Infill Projects and Tiering.

Certain "infill" projects may tier off of a previously certified EIR. An "infill" project is defined as a project with residential, retail, and/or commercial uses, a transit station, a school, or a public office building. It must be located in an urban area on a previously developed site or on an undeveloped site that is surrounded by developed uses. The project must be either consistent with land use planning strategies that achieve greenhouse gas ("GHG") emission reduction targets, feature a small walkable community project, or where a sustainable communities or alternative planning strategy has not yet been adopted for the area, include a residential density of at least 20 units per acre or a floor area ratio of at least 0.75. The project must also meet a number of standards related to energy efficiency that are not yet defined but which SB 226 directs the Office of Land Use and Climate Innovation to prepare.

If an EIR was certified for a planning level decision by a city or county (such as a General Plan or Specific Plan), the scope of the CEQA review for a later "infill" project can be limited to those effects on the environment that: 1) are specific to the project or to the project site and were not addressed as significant effects in the prior EIR; or 2) substantial new information shows will be more significant than described in the prior EIR.

When a project meets the definition of "infill" and either of the above conditions exist but a Mitigated Negative Declaration cannot be adopted, then the subsequent EIR for such a project need not consider alternative locations, densities, and building intensities or growth-inducing impacts.

(d) Statement of Overriding Considerations.

A Lead Agency may also tier off of a previously prepared Statement of Overriding Considerations if certain conditions are met. (See Local Guidelines Section 7.37.)

(Reference: State CEQA Guidelines, § 15152.)

8.03 PROJECT EIR.

The most common type of EIR examines the environmental impacts of a specific development project and focuses primarily on the changes in the environment that would result from the development project. This type of EIR must examine all phases of the project, including planning, construction, and operation.

If the EIR for a redevelopment plan is a Project EIR, all public and private activities or undertakings pursuant to or in furtherance of the Redevelopment Plan shall constitute a single project, which shall be deemed approved at the time of the adoption of the Redevelopment Plan. Although the Agency will probably not act as a Lead Agency for a Redevelopment Plan, the Agency may act as a Responsible Agency.

(Reference: State CEQA Guidelines, §§ 15161, 15180.)

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8.04 SUBSEQUENT EIR.

A Subsequent EIR is required when a previous EIR has been prepared and certified, or a Negative Declaration or Mitigated Negative Declaration has been adopted, for a project and at least one of the three following situations occur:

(a) Substantial changes are proposed in the project which will require major revisions of a previous EIR due to the identification of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(b) Substantial changes occur with respect to the circumstances under which the project is to be undertaken which will require major revisions of a previous EIR due to the identification of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration/Mitigated Negative Declaration was adopted, becomes available and shows any of the following:

(1) the project will have one or more significant effects not discussed in a previous EIR, Negative Declaration, or Mitigated Negative Declaration;

(2) significant effects previously examined will be substantially more severe than shown in a previous EIR;

(3) mitigation measures or alternatives previously found not to be feasible are in fact feasible and would substantially reduce one or more significant effects, but the project proponent declines to adopt the mitigation measures or alternatives; or

(4) mitigation measures or alternatives which were not considered in a previous EIR would substantially lessen one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measures or alternatives.

A Subsequent EIR must receive the same circulation and review as the previous EIR received. As a potential tool to determine whether a Subsequent EIR is required, see Form J-1 of these Local Guidelines.

In instances where the Agency is evaluating a modification or revision to an existing use permit, the Agency may consider only those environmental impacts related to the changes between what was allowed under the old permit and what is requested under the new permit. Only if these differential impacts fall within the categories described above may the Agency require additional environmental review.

When the Agency is considering approval of a development project that is consistent with a general plan for which an EIR was completed, another EIR is required only if the project causes environmental effects peculiar to the parcel which were not addressed in the prior EIR or substantial new information shows the effects peculiar to the parcel will be more significant than described in the prior EIR. (Reference: State CEQA Guidelines, § 15162.)

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8.05 SUPPLEMENTAL EIR.

The Agency may choose to prepare a Supplemental EIR, rather than a Subsequent EIR, if any of the conditions described in Local Guidelines Section 8.04 have occurred but only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation. To assist the Agency in making this determination, the decision-making body should request an Initial Study and/or a recommendation by Staff. The Supplemental EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

A Supplemental EIR shall be given the same kind of notice and public review as is given to a Draft EIR but may be circulated by itself without recirculating the previous EIR.

When the decision-making body decides whether to approve the project, it shall consider the previous EIR as revised by the Supplemental EIR. Findings shall be made for each significant effect identified in the Supplemental EIR.

(Reference: State CEQA Guidelines, § 15163.)

8.06 ADDENDUM TO AN EIR.

The Agency shall prepare an Addendum to a previously certified EIR, rather than a Subsequent or Supplemental EIR, only if changes or additions to the EIR are necessary, but none of the conditions described in Local Guidelines Section 8.04 or 8.05 calling for preparation of a Subsequent or Supplemental EIR have occurred. Since significant effects on the environment were addressed by findings in the original EIR, no new findings are required in the Addendum.

An Addendum to an EIR need not be circulated for public review but should be included in or attached to the Final EIR. The decision-making body shall consider the Addendum with the Final EIR prior to making a decision on a project. A brief explanation of the decision not to prepare a Subsequent EIR or a Supplemental EIR should be included in the Addendum, the Lead Agency's findings on the project, or elsewhere in the record. This explanation must be supported by substantial evidence.

(Reference: State CEQA Guidelines, § 15164.)

8.07 STAGED EIR.

When a large capital project will require a number of discretionary approvals from governmental agencies and one of the approvals will occur more than two years before construction will begin, a Staged EIR may be prepared. The Staged EIR covers the entire project in a general form or manner. A Staged EIR should evaluate a proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of an entire project. The particular aspect of the project before the Agency for approval shall be discussed with a greater degree of specificity.

When a Staged EIR has been prepared, a Supplemental EIR shall be prepared when a later approval is required for the project and the information available at the time of the later approval

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would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

(Reference: State CEQA Guidelines, § 15167.)

8.08 PROGRAM EIR.

A Program EIR is an EIR that may be prepared on an integrated series of actions that are related either:

(a) Geographically;
(b) As logical parts in a chain of contemplated actions;
(c) In connection with the issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or
(d) As individual projects carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways.

An advantage of using a Program EIR is that it can "[a]llow the Lead Agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (State CEQA Guidelines section 15168(b)(4).) A Program EIR is distinct from a Project EIR, as a Project EIR is prepared for a specific project and must examine in detail site-specific considerations. Program EIRs are commonly used in conjunction with the process of tiering.

Tiering is the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs. (State CEQA Guidelines section 15385; see also Local Guidelines Sections 8.02 and 11.75.) Tiering is proper "when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports." (Pub. Resources Code, § 21093(a).) For example, the California Supreme Court has ruled that "CEQA does not mandate that a first-tier program EIR identify with certainty particular sources of water for second-tier projects that will be further analyzed before implementation during later stages of the program. Rather, identification of specific sources is required only at the second-tier stage when specific projects are considered." (*In re Bay-Delta etc.* (2008) 43 Cal. 4th 1143.)

Subsequent activities in the program must be examined in light of the Program EIR to determine whether additional environmental documents must be prepared. Additional environmental review documents must be prepared if the proposed later project may arguably cause significant adverse effects on the environment.

(Reference: State CEQA Guidelines, § 15168.)

8.09 USE OF A PROGRAM EIR WITH SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS.

A Program EIR can be used to simplify the task of preparing environmental documents on later activities in the program. The Program EIR can:

(a) Provide the basis for an Initial Study to determine whether the later activity may have any significant effects;
(b) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives and other factors that apply to the program as a whole; or
(c) Focus an EIR on a later activity to permit discussion solely of new effects which had not been considered before.

If a Program EIR is prepared for a redevelopment plan, subsequent activities in the redevelopment program will be subject to review if they would have effects that were not examined in the Program EIR. Where the later activities involve site-specific operations, the Agency should use a written checklist or similar device to document the evaluation of the site and the proposed activity to determine whether the environmental effects of the operation were within the scope of the Program EIR. If a later activity would have effects that were not examined in the Program EIR, a new Initial Study would need to be prepared leading to an EIR, Negative Declaration, or Mitigated Negative Declaration. That later analysis may tier from the Program EIR as provided in State CEQA Guidelines section 15152.

If the Agency finds that no Subsequent EIR would be required, the Agency can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document is required. (See Local Guidelines Section 8.04.) Whether a later activity is within the scope of a Program EIR is a factual question that the Lead Agency determines based on substantial evidence in the record. Factors that the Lead Agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the Program EIR.

(Reference: State CEQA Guidelines, § 15168.)

8.10 USE OF AN EIR FROM AN EARLIER PROJECT.

A single EIR may be used to describe more than one project when the projects involve substantially identical environmental impacts. Any environmental impacts peculiar to one of the projects must be separately set forth and explained.

(Reference: State CEQA Guidelines, § 15165.)

8.11 MASTER EIR.

A Master EIR is an EIR which may be prepared for:

(a) A general plan (including elements and amendments);
(b) A specific plan;
(c) A project consisting of smaller individual projects to be phased;
(d) A regulation to be implemented by subsequent projects;
(e) A project to be carried out pursuant to a development agreement;
(f) A project pursuant to or furthering a redevelopment plan;
(g) A state highway or mass transit project subject to multiple reviews or approvals; or

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(h) A regional transportation plan or congestion management plan.

A Master EIR must do both of the following:

(a) Describe and present sufficient information about anticipated subsequent projects within its scope, including their size, location, intensity, and scheduling; and
(b) Preliminarily describe potential impacts of anticipated subsequent projects for which insufficient information is available to support a full impact assessment.

The Agency and Responsible Agencies identified in the Master EIR may use the Master EIR to limit environmental review of subsequent projects. However, the Lead Agency for the subsequent project must prepare an Initial Study to determine whether the subsequent project and its significant environmental effects were included in the Master EIR. If the Lead Agency for the subsequent project finds that the subsequent project will have no additional significant environmental effect and that no new mitigation measures or alternatives may be required, it may prepare written findings to that effect without preparing a new environmental document. When the Lead Agency makes this finding, it must provide public notice of the availability of its proposed finding for public review and comment in the same manner as if it were providing public notice of the availability of a draft EIR. (See Sections 15177(d) and 15087 of the State CEQA Guidelines and Section 7.25 of these Local Guidelines.)

A previously certified Master EIR cannot be relied upon to limit review of a subsequent project if:

(a) A project not identified in the certified Master EIR has been approved and that project may affect the adequacy of the Master EIR for the subsequent project now under consideration; or
(b) The Master EIR was certified more than five (5) years before the filing of an application for the subsequent project, unless the Agency reviews the adequacy of the Master EIR and:

(1) Finds that, since the Master EIR was certified, no substantial changes have occurred that would cause the subsequent project to have significant environmental impacts, and there is no new information that the subsequent project would have significant environmental impacts; or

(2) Prepares an Initial Study and either certifies a Subsequent or Supplemental EIR or adopts a Mitigated Negative Declaration that addresses any substantial changes or new information that would cause the subsequent project to have potentially significant environmental impacts. The certified subsequent or supplemental EIR must either be incorporated into the previously certified Master EIR or the Agency must identify any deletions, additions or other modifications to the previously certified Master EIR in the new document. The Agency may include a section in the subsequent or supplemental EIR that identifies these changes to the previously certified Master EIR.

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When the Lead Agency cannot find that the subsequent project will have no additional significant environmental effect and no new mitigation measures or alternatives will be required, it must prepare either a Mitigated Negative Declaration or an EIR for the subsequent project.

(Reference: State CEQA Guidelines, § 15175.)

8.12 FOCUSED EIR.

A Focused EIR is an EIR for a subsequent project identified in a Master EIR. It may be used only if the Agency finds that the Master EIR's analysis of cumulative, growth-inducing, and irreversible significant environmental effects is adequate for the subsequent project. The Focused EIR must incorporate by reference the Master EIR.

The Focused EIR must analyze additional significant environmental effects not addressed in the Master EIR and any new mitigation measures or alternatives not included in the Master EIR. "Additional significant effects on the environment" means those project-specific effects on the environment that were not addressed as significant effects on the environment in the Master EIR.

The Focused EIR must also examine the following:

(a) Significant effects discussed in the Master EIR for which substantial new information exists that shows those effects may be more significant than described in the Master EIR;
(b) Those mitigation measures found to be infeasible in the Master EIR for which substantial new information exists that shows the effects may be more significant than described in the Master EIR; and
(c) Those mitigation measures found to be infeasible in the Master EIR for which substantial new information exists that shows those measures may now be feasible.

The Focused EIR need not examine the following effects:

(a) Those that were mitigated through Master EIR mitigation measures; or
(b) Those that were examined in the Master EIR in sufficient detail to allow project-specific mitigation or for which mitigation was found to be the responsibility of another agency.

A Focused EIR may be prepared for a multifamily residential project not exceeding 100 units or a mixed use residential project not exceeding 100,000 square feet even though the project was not identified in a Master EIR, if the following conditions are met:

(a) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five (5) years of the Focused EIR's certification;
(b) The project does not require the preparation of a Subsequent or Supplemental EIR; and
(c) The parcel is surrounded by immediately contiguous urban development, was previously developed with urban uses, or is within one-half mile of a rail transit station.

A Focused EIR for these projects should be limited to potentially significant effects that are project-specific and/or which substantial new information shows will be more significant than

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described in the Master EIR. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth-inducing impacts of the project.

(Reference: State CEQA Guidelines, § 15179.5.)

8.13 SPECIAL REQUIREMENTS FOR REDEVELOPMENT PROJECTS.

An EIR for a redevelopment plan may be a Master EIR, Program EIR or Project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a Program EIR or a Project EIR. Normally, the Agency will not be a Lead Agency for a redevelopment plan. However, if the Agency is a Responsible Agency on such a project, the Agency should endeavor to ensure that the county and/or applicable city as the case may be, as Lead Agency, analyzes these impacts in accordance with CEQA.

If a Program EIR is prepared for a redevelopment plan, subsequent activities in the redevelopment program will be subject to review if they would have effects that were not examined in the Program EIR. The Lead Agency should use a written checklist or similar device to document the evaluation of the site and the proposed activity to determine whether the environmental effects of the operation were indeed covered in the Program EIR. If the Lead Agency finds that no new effects could occur, no new mitigation measures would be required or that State CEQA Guidelines sections 15162 and 15163 do not otherwise apply, the Lead Agency can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document is required.

If the EIR for a redevelopment plan is a Project EIR, all public and private activities or undertakings pursuant to or in furtherance of the Redevelopment Plan shall constitute a single project, which shall be deemed approved at the time of the adoption of the Redevelopment Plan. Once certified, no subsequent EIRs will be needed unless required by State CEQA Guidelines sections 15162 or 15163. If a Master EIR is prepared for a redevelopment plan, subsequent projects will be subject to review if they would have effects that were not examined in the Master EIR. If no new effects could occur or no new mitigation measures would be required, the Lead Agency can approve the activity as being within the scope of the project covered by the Master EIR, and no new environmental document is required.

(Reference: State CEQA Guidelines, § 15180.)

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9. AFFORDABLE HOUSING

9.01 STREAMLINED, MINISTERIAL APPROVAL PROCESS FOR AFFORDABLE HOUSING PROJECTS

The legislature has provided reforms and incentives to facilitate and expedite the approval and construction of affordable housing.

(a) An applicant may submit an application for a development that is subject to the streamlined, ministerial approval process and is not subject to a conditional use permit or any other non-legislative discretionary approval if the development satisfies all of the following objective planning standards:

(i) The development is a multifamily housing development that contains two or more residential units.

(ii) The development is located on a site that satisfies the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C)(1) A site that meets the requirements of clause (2) and satisfies any of the following:

(I) The site is zoned for residential use or residential mixed-use development.

(II) The site has a general plan designation that allows residential use or a mix of residential and nonresidential uses.

(III) The site is zoned for office or retail commercial use and meets the requirements of Gov. Code section 65852.24.

(2) At least two-thirds of the square footage of the development designated for residential use. Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Government Code section 65915 shall be included in the square footage calculation. The square footage of the development shall not include underground space, such as basements or underground parking garages.

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(iii) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction or covenant providing that any lower or moderate income housing units required pursuant to subparagraph B of Paragraph (iv) of this Subsection shall remain available at affordable housing costs or rent to persons and families of lower or moderate income for the following applicable minimum durations:

(A) Fifty-five years for units that are rented.

(B) Forty-five years for units that are owned.

(iv) The development satisfies subparagraphs (A) and (B) below:

(A) The development is located in a locality that the department has determined is subject to this subparagraph on the basis that the number of units that have been issued building permits, as shown on the most recent production report received by the department, is less than the locality's share of the regional housing needs, by income category, for that reporting period. A locality shall remain eligible under this subparagraph until the department's determination for the next reporting period. A locality shall be subject to this subparagraph if it has not submitted an annual housing element report to the department pursuant to paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years before the development submitted an application for approval under this section.

(B) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on one of the following:

(1) The locality did not submit its latest production report to the department by the time period required by Government Code section 65400, or that production report reflects that there were fewer units of above moderate-income housing approved than were required for the regional housing needs assessment cycle for that reporting period. In addition, if the project contains more than 10 units of housing, the project does either of the following:

A. The project dedicates a minimum of 10 percent of the total number of units, before calculating any density bonus, to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the area median income, that local ordinance applies.

B. If the project is located within the San Francisco Bay area, the project, in lieu of complying with subclause (A),

dedicates 20 percent of the total number of units, before calculating any density bonus, to housing affordable to households making below 120 percent of the area median income with the average income of the units at or below 100 percent of the area median income. However, a local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the area median income, or requires that any of the units be dedicated at a level deeper than 120 percent. In order to comply with this subclause, the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the area median income shall not exceed 30 percent of the gross income of the household. For purposes of this subclause, "San Francisco Bay area" means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the Agency and County of San Francisco.

(2) The locality did not submit its latest production report to the department by the time period required by Government Code section 65400, or that production report reflects that there were fewer units of housing affordable to households making at or below 80 percent of the area median income that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, and the project seeking approval dedicates 50 percent of the total number of units, before calculating any density bonus, to housing affordable to households making at or below 80 percent of the area median income. However, if the locality has adopted a local ordinance that requires that greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the area median income, that ordinance applies.

(3) The locality did not submit its latest production report to the department by the time period required by Government Code section 65400, or if the production report reflects that there were fewer units of housing affordable to any income level described in clause (i) or (ii) that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (i) or (ii).

(C)(i) A development proponent that uses a unit of affordable housing to satisfy the requirements of subparagraph (B) may also satisfy any other local or state requirement for affordable housing, including local ordinances or the Density Bonus Law in Government Code section 65915, provided that the development proponent complies with the applicable requirements in the state or local law.

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(C)(ii) A development proponent that uses a unit of affordable housing to satisfy any other state or local affordability requirement may also satisfy the requirements of subparagraph (B), provided that the development proponent complies with applicable requirements of subparagraph (B).

(C)(iii) A development proponent may satisfy the affordability requirements of subparagraph (B) with a unit that is restricted to households with incomes lower than the applicable income limits required in subparagraph (B).

(v) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Government Code section 65915, is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, "objective zoning standards" and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning standards pursuant to this section if the development is consistent with the standards set forth in the general plan.

(C) A project that satisfies the requirements of Government Code section 65852.24 shall be deemed consistent with objective zoning standards, objective design standards, and objective subdivision standards if the project is consistent with the provisions of subdivision (b) of Government Code section 65852.24 and if none of the square footage in the project is designated for hotel, motel, bed and breakfast inn, or other transient lodging use, except for a residential hotel. For purposes of this subdivision, "residential hotel" shall have the same meaning as defined in Section 50519 of the Health and Safety Code.

(vi) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual.

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Government Code section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply:

(i) The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses. This section does not alter or change the conditions to remove a site from the list of hazardous waste sites listed pursuant to Government Code section 65962.5; or

(ii) The State Department of Public Health, State Water Resources Control Board, Department of Toxic Substances Control, or a local agency making a determination pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the

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development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law, Health and Safety Code section 18901, and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code.

(G) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit pursuant to Code of Federal Regulations section 59.1.

(H) Within a floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Code of Federal Regulations section 60.3(d)(3).

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, Fish and Game Code section 2800, habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act, Fish and Game Code section 2050, or the Native Plant Protection Act, Fish and Game Code section 1900.

(K) Lands under conservation easement.

(vii) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(1) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(2) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(3) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(viii) The applicant has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(1) The entirety of the development is a public work for purposes of Labor Code section 1720.

(2) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid 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 Labor Code sections 1773 and 1773.9, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subsection (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Labor Code section 1776 and make those records available for inspection and copying as provided in therein.

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(IV) Except as provided in subsection (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Labor Code section 1741, which may be reviewed pursuant to Labor Code section 1742, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Labor Code section 1771.2. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Labor Code section 1742.1.

(V) Subsections (III) and (IV) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure. For purposes of this clause, "project labor agreement" has the same meaning as set forth in Public Contract Code section 2500(b)(1).

(VI) Notwithstanding Labor Code section 1773.1, subdivision (c), the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Labor Code section 511 or 514.

(B)(1) For developments for which any of the following conditions apply, certified that a skilled and trained workforce shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2023, until December 31, 2025, the development consists of 50 or more units that are not 100 percent subsidized affordable housing and will be located within a

jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units that are not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2023, until December 31, 2025, the development consists of more than 25 units and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal bay county.

(2) For purposes of this section, "skilled and trained workforce" has the same meaning as provided in the Public Contract Code section 2600.

(3) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subdivision (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Public Contract Code section 2600. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Government Code section 7920.000, et seq.) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Public Contract Code section 2600 shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled

and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Labor Code section 1741, and may be reviewed pursuant to the same procedures in Labor Code section 1742. Penalties shall be paid to the State Public Works Enforcement Fund.

(IV) Subdivision (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as set forth in Public Contract Code section 2500(b)(1).

(C) Notwithstanding subparagraphs (A) and (B) above, a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(1) The project includes 10 or fewer units.

(2) The project is not a public work for purposes of Labor Code section 1720.

(ix) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Government Code section 66410, et seq.) or any other applicable law authorizing the subdivision of land, unless either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (viii).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (h).

(x) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law, Civil Code section 798, the Recreational Vehicle Park Occupancy Law, Civil Code section 799.20, the

Mobilehome Parks Act, Health and Safety Code section 18200, or the Special Occupancy Parks Act, Health and Safety Code section 18860.

(b)(i)(A)(1) Before submitting an application for a development subject to the streamlined, ministerial approval process described in this section, the development proponent shall submit to the local government a notice of its intent to submit an application. The notice of intent shall be in the form of a preliminary application that includes all of the information described in Section 65941.1 of the Government Code, as that section read on January 1, 2020.

(2) Upon receipt of a notice of intent to submit an application, the local government shall engage in a scoping consultation regarding the proposed development with any California Native American tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, of the proposed development. In order to expedite compliance with this subdivision, the local government shall contact the Native American Heritage Commission for assistance in identifying any California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development.

(3) The timeline for noticing and commencing a scoping consultation in accordance with this subdivision shall be as follows:

A. The local government shall provide a formal notice of a development proponent's notice of intent to submit an application to each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development within 30 days of receiving that notice of intent. The formal notice provided pursuant to this subclause shall include all of the following:

1. A description of the proposed development.
2. The location of the proposed development.
3. An invitation to engage in a scoping consultation in accordance with this subdivision.

B. Each California Native American tribe that receives a formal notice pursuant to this clause shall have 30 days from the receipt of that notice to accept the invitation to engage in a scoping consultation.

C. If the local government receives a response accepting an invitation to engage in a scoping consultation pursuant to this subdivision, the local government shall commence the scoping consultation within 30 days of receiving that response.

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(B) The scoping consultation shall recognize that California Native American tribes traditionally and culturally affiliated with a geographic area have knowledge and expertise concerning the resources at issue and shall take into account the cultural significance of the resource to the culturally affiliated California Native American tribe.

(C) The parties to a scoping consultation conducted pursuant to this subdivision shall be the local government and any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development. More than one California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development may participate in the scoping consultation. However, the local government, upon the request of any California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed development, shall engage in a separate scoping consultation with that California Native American tribe. The development proponent and its consultants may participate in a scoping consultation process conducted pursuant to this subdivision if all of the following conditions are met:

(1) The development proponent and its consultants agree to respect the principles set forth in this subdivision.

(2) The development proponent and its consultants engage in the scoping consultation in good faith.

(3) The California Native American tribe participating in the scoping consultation approves the participation of the development proponent and its consultants. The California Native American tribe may rescind its approval at any time during the scoping consultation, either for the duration of the scoping consultation or with respect to any particular meeting or discussion held as part of the scoping consultation.

(D) The participants to a scoping consultation pursuant to this subdivision shall comply with all of the following confidentiality requirements: (1) Government Code section 7927.000; Government Code section 7927.005; Public Resources Code section 21083.3, subdivision (c); (4) State CEQA Guidelines section 15120, subdivision (d); and any additional confidentiality standards adopted by the California Native American tribe participating in the scoping consultation.

(E) CEQA does not apply to the scoping consultation conducted pursuant to this subdivision.

(b)(ii)(A) If, after concluding the scoping consultation, the parties find that no potential tribal cultural resource would be affected by the proposed development, the development proponent may submit an application for the proposed development

that is subject to the streamlined, ministerial approval process described in this section

.

(B) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is documented between the California Native American tribe and the local government on methods, measures, and conditions for tribal cultural resource treatment, the development proponent may submit the application for a development subject to the streamlined, ministerial approval process described in this section. The local government shall ensure that the enforceable agreement is included in the requirements and conditions for the proposed development.

(C) If, after concluding the scoping consultation, the parties find that a potential tribal cultural resource could be affected by the proposed development and an enforceable agreement is not documented between the California Native American tribe and the local government regarding methods, measures, and conditions for tribal cultural resource treatment, the development shall not be eligible for the streamlined, ministerial approval process described in this section.

(D) For purposes of this paragraph, a scoping consultation shall be deemed to be concluded if either of the following occur:

(1) The parties to the scoping consultation document an enforceable agreement concerning methods, measures, and conditions to avoid or address potential impacts to tribal cultural resources that are or may be present.

(2) One or more parties to the scoping consultation, acting in good faith and after reasonable effort, conclude that a mutual agreement on methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present cannot be reached.

(E) If the development or environmental setting substantially changes after the completion of the scoping consultation, the local government shall notify the California Native American tribe of the changes and engage in a subsequent scoping consultation if requested by the California Native American tribe.

(b)(iii) A local government may only accept an application for streamlined, ministerial approval pursuant to this section if one of the following applies:

(A) A California Native American tribe that received a formal notice of the development proponent's notice of intent to submit an application pursuant to this section did not accept the invitation to engage in a scoping consultation.

(B) The California Native American tribe accepted an invitation to engage in a scoping consultation pursuant to this section but substantially failed to engage in the scoping consultation after repeated documented attempts by the local government to engage the California Native American tribe.

(C) The parties to a scoping consultation pursuant to this subdivision find that no potential tribal cultural resource will be affected by the proposed development.

(D) A scoping consultation between a California Native American tribe and the local government has occurred and resulted in an agreement.

(b)(iv) A project shall not be eligible for the streamlined, ministerial process described in this section if any of the following apply:

(A) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project.

(B) There is a potential tribal cultural resource that could be affected by the proposed development and the parties to a scoping consultation conducted pursuant to this subdivision do not document an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment, as described in this section.

(C) The parties to a scoping consultation conducted pursuant to this subdivision do not agree as to whether a potential tribal cultural resource will be affected by the proposed development.

(b)(v) (A) If, after a scoping consultation conducted pursuant to this subdivision, a project is not eligible for the streamlined, ministerial process described in this section for any or all of the following reasons, the local government shall provide written documentation of that fact, and an explanation of the reason for which the project is not eligible, to the development proponent and to any California Native American tribe that is a party to that scoping consultation:

(1) There is a tribal cultural resource that is on a national, state, tribal, or local historic register list located on the site of the project.

(2) The parties to the scoping consultation have not documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment.

(3) The parties to the scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the proposed development.

(b)(v) (B) The written documentation provided to a development proponent pursuant to this paragraph shall include information on how the development proponent may

seek a conditional use permit or other discretionary approval of the development from the local government.

(b)(vi) This section is not intended, and shall not be construed, to limit consultation and discussion between a local government and a California Native American tribe pursuant to other applicable law, confidentiality provisions under other applicable law, the protection of religious exercise to the fullest extent permitted under state and federal law, or the ability of a California Native American tribe to submit information to the local government or participate in any process of the local government.

(b)(vii) For purposes of this subdivision:

(A) "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between local governments and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural importance. A lead agency shall consult the tribal consultation best practices described in the "State of California Tribal Consultation Guidelines: Supplement to the General Plan Guidelines" prepared by the Office of Land Use and Climate Innovation.

(B) "Scoping" means the act of participating in early discussions or investigations between the local government and California Native American tribe, and the development proponent if authorized by the California Native American tribe, regarding the potential effects a proposed development could have on a potential tribal cultural resource, as defined in Section 21074 of the Public Resources Code, or California Native American tribe, as defined in Section 21073 of the Public Resources Code.

(b)(viii) This subdivision (b) shall not apply to any project that has been approved under the streamlined, ministerial approval process provided under this section before September 25, 2020.

(c) (i) If a local government determines that a development submitted pursuant to this section is consistent with the objective planning standards specified in subdivision (a) and pursuant to paragraph (iii) of this subdivision, it shall approve the development. If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(ii) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(iii) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards. The local government shall not determine that a development, including an application for a modification under subdivision (g), is in conflict with the objective planning standards on the basis that application materials are not included, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(d) (i) Any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed, and if the development is consistent with all objective standards, the local government shall approve the development as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(ii) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (ix) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Government Code section 66410)) shall be

exempt from the requirements of CEQA and shall be subject to the public oversight timelines set forth in paragraph (i).

(iii) If a local government determines that a development submitted pursuant to this section is in conflict with any of the standards imposed pursuant to paragraph (i), it shall provide the development proponent written documentation of which objective standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that objective standard or standards consistent with the timelines described in paragraph (i) of subdivision (c).

(e) (i) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing parking requirements in multifamily developments, shall not impose parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(ii) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(f) (i) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project satisfies both of the following requirements:

(A) The project includes public investment in housing affordability, beyond tax credits.

(B) At least 50 percent of the units are affordable to households making at or below 80 percent of the area median income.

(ii) If a local government approves a development pursuant to this section, and the project does not satisfy the requirements of subparagraphs (A) and (B) of paragraph (f)(i), that approval shall remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval, from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided construction activity, including demolition and grading activity, on the

development site has begun pursuant to a permit issued by the local jurisdiction and is in progress. For purposes of this subdivision, "in progress" means one of the following:

(A) The construction has begun and has not ceased for more than 180 days.

(B) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.

(C) Notwithstanding subparagraph (ii), a local government may grant a project a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.

(iii) If the development proponent requests a modification pursuant to subdivision (g), then the time during which the approval shall remain valid shall be extended for the number of days between the submittal of a modification request and the date of its final approval, plus an additional 180 days to allow time to obtain a building permit. If litigation is filed relating to the modification request, the time shall be further extended during the pendency of the litigation. The extension required by this paragraph shall only apply to the first request for a modification submitted by the development proponent.

(g) (i)(A) A development proponent may request a modification to a development that has been approved under the streamlined, ministerial approval process provided in subdivision (b) if that request is submitted to the local government before the issuance of the final building permit required for construction of the development.

(i)(B) Except as provided in paragraph (g)(iiii), the local government shall approve a modification if it determines that the modification is consistent with the objective planning standards specified in subdivision (a) that were in effect when the original development application was first submitted.

(i)(C) The local government shall evaluate any modifications requested pursuant to this subdivision for consistency with the objective planning standards using the same assumptions and analytical methodology that the local government originally used to assess consistency for the development that was approved for streamlined, ministerial approval pursuant to subdivision (b).

(i)(D) A guideline that is adopted or amended by the Department of Housing and Community Development after a development is approved through the streamlined, ministerial

approval process described in subdivision (b) shall not be used as a basis to deny proposed modifications.

(ii) Upon receipt of the development proponent's application requesting a modification, the local government shall determine if the requested modification is consistent with the objective planning standard and either approve or deny the modification request within 60 days after submission of the modification, or within 90 days if design review is required.

(iii) Notwithstanding paragraph (g)(i), the local government may apply objective planning standards adopted after the development application was first submitted to the requested modification in any of the following instances:

(A) The development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more. The calculation of the square footage of construction changes shall not include underground space.

(B) The development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact as that term is defined in subparagraph (A) of paragraph (1) of subdivision (j) of Government Code section 65589.5, upon the public health or safety and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact. The calculation of the square footage of construction changes shall not include underground space.

(C) Objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building plumbing, electrical fire, and grading codes, may be applied to all modification applications that are submitted prior to the first building permit application. Those standards may be applied to modification applications submitted after first building permit application if agreed to by the development proponent.

(iv) The local government's review of a modification request pursuant to this subdivision shall be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development's consistency with the objective planning standards and shall not reconsider prior determinations that are not affected by the modification.

(h) (i) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project

solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section.

(ii) A local government shall issue a subsequent permit required for a development approved under this section if the application substantially complies with the development as it was approved pursuant to subdivision (b). Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. The local government shall consider the application for subsequent permits based upon the objective standards specified in any state or local laws that were in effect when the original development application was submitted, unless the development proponent agrees to a change in objective standards. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a "subsequent permit" means a permit required subsequent to receiving approval under subdivision (b), and includes, but is not limited to, demolition, grading, and building permits and final maps, if necessary.

(i) (i) This section shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of Government Code section 65583.2(i).

(ii) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Government Code section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.

(j) CEQA does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:

(i) Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(ii) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(k) For purposes of this section the following definitions shall apply:

(1) "Affordable housing cost" has the same meaning as set forth in section 50052.5 of the Health and Safety Code.

(2) (A) Subject to the qualification provided by subparagraph (B), "affordable rent" has the same meaning as set forth in Section 50063 of the Health and Safety Code.

(B) For a development for which an application pursuant to this section was submitted prior to January 1, 2019, that includes 500 units or more of housing, and that dedicates 50 percent of the total number of units, before calculating any density bonus, to housing affordable to households making at, or below, 80 percent of the area median income, affordable rent for at least 30 percent of these units shall be set at an affordable rent as defined in subparagraph (k)(1), and "affordable rent" for the remainder of these units shall mean a rent that is consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(3) "Department" means the Department of Housing and Community Development.

(4) "Development proponent" means the developer who submits an application for streamlined approval pursuant to this section.

(5) "Completed entitlements" means a housing development that has received all the required land use approvals or entitlements necessary for the issuance of a building permit.

(6) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(7) "Moderate income housing units" means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(8) "Production report" means the information reported pursuant to subparagraph (D) of paragraph (2) of subdivision (a) of Government Code section 65400.

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(9) "State agency" includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.

(10) "Subsidized" means units that are price or rent restricted such that the units are affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.

(11) "Reporting period" means either of the following:

(A) The first half of the regional housing needs assessment cycle.

(B) The last half of the regional housing needs assessment cycle.

(12) "Urban uses" means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (b) is not a "project" under CEQA.

(m) This section shall remain in effect until January 1, 2036.

(Reference: Gov. Code, § 65913.4.)

9.02 MINISTERIAL APPROVAL PROCESS FOR URBAN LOT SPLITS AND HOUSING DEVELOPMENTS WITH NO MORE THAN TWO RESIDENTIAL UNITS WITHIN A SINGLE-FAMILY RESIDENTIAL ZONE (SB 9)

(a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, and shall therefore not be subject to CEQA, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel is not located on a site that is any of the following:

(A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and

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designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction;

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993);

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code—unless the parcel is a site excluded from the specified hazard zone by a local agency, or is a site that has adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development;

(D) A hazardous waste site that is listed pursuant to Government Code section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses;

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law, and by any local building department;

(F) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency;

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification;

(H) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation

Planning Act, habitat conservation plan pursuant to the federal Endangered Species Act of 1973, or other adopted natural resources protection plan;

(I) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act; or lands under conservation easement; or

(J) Lands under conservation easement.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows; or

(B) The site has not been occupied by a tenant in the last three years

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

Other regulations governing the approval of a housing development under this section are set forth in Government Code section 65852.21(a).

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(b) Notwithstanding any other provision of local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split—and such urban lot split shall therefore not be subject to CEQA—only if the local agency determines that the parcel map for the urban lot split meets all of the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) Both newly created parcels are no smaller than 1,200 square feet, except that a local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval.

(3) The parcel being subdivided meets all of the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel is not located on a site enumerated in Paragraph (a)(2) above.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

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(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

Other regulations governing the approval of an urban lot split under this section are set forth in Government Code section 65852.21(b).

9.03 STREAMLINED, MINISTERIAL REVIEW FOR ADAPTIVE REUSE PROJECTS (AB 507)

An adaptive reuse project is a project that retrofits and repurposes an existing building to create new residential or mixed uses including office conversion projects. An adaptive reuse project shall be deemed a use by right in all zones, regardless of zoning, and subject to streamlined, ministerial review and exempt from CEQA, except that:

(1) Any nonresidential use in a mixed-use project must be allowed by existing zoning or be a lawful nonconforming use.

(2) Tourist hotel uses must still follow the local jurisdiction's normal approval process.

(3) Adaptive reuse projects are not allowed in industrial zones that do not permit residential uses.

(a) An adaptive reuse project site must be urban in character:

(1) The site must be a legal parcel located within a U.S. Census–designated urbanized area.

(2) At least 75 percent of the site perimeter must touch other urban development. Streets, highways, and similar rights-of-way count as adjoining development.

(b) An adaptive reuse project must reuse an existing building that qualifies under one of the following categories:

(1) A building less than 50 years old, which may be reused without historic review.

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(2) A building listed as a historic resource, provided the project follows applicable historic-preservation requirements.

(3) A building more than 50 years old that has been reviewed by the local government and determined to be either: (1) a historic resource, with the project complying with historic requirements; or, (2) not a historic resource, allowing the project to proceed without historic constraints.

(c) An adaptive reuse project must meet the following affordability criteria, as applicable:

(1) Rental projects must provide either: (1) 8% of units for very low income households and 5 % of the units for extremely low income households; or (2) 15% of the units for lower income households. All affordable rental units must remain affordable for 55 years.

(2) Owner-occupied projects must provide either: (1) 30% of the units shall be offered at an affordable housing costs to moderate-income households; or (2) 15% of the units shall be offered at an affordable housing cost to lower income households. All affordable ownership units must remain affordable for 45 years.

(3) If a local inclusionary housing policy applies, the project must: (1) meet whichever affordability percentage is higher; (2) must serve the lowest income level required by either state or local law; and (3) for rental project, include very low and extremely low-income units if the local policy does not require them, with adjustments to avoid double counting.

(d) If the adaptive reuse project includes nonresidential uses, at least half of the above-ground building area must be devoted to residential use.

A local government may adopt an ordinance to specify the process and requirements applicable to adaptive reuse projects and require an adaptive reuse project to comply with all objective planning standards found in the ordinance. Such an ordinance is not a "project" under CEQA.

Other regulations governing adaptive reuse projects under this section are set forth in Government Code sections 65658.3, 65658.5(a).

9.04 HOUSING DEVELOPMENT PROJECT LOCATED IN AREAS OF SMALLER POPULATIONS (SB 158)

CEQA does apply to a housing development that is: (1) located in a city with a population of more than 85,000 but less than 95,000, as determined by the 2020 Census, (2) located in a county with a population of more than 440,000 but less than 455,000, as determined by the 2020 Census, (3) a portion of the parcel where the project is located is identified on a United States Fish

and Wildlife Service map as freshwater forested or shrub wetland; and (4) a portion of the parcel where the project is located is within a regulatory floodway.

(Reference: Pub. Resources Code, § 21080.73.)

9.05 APPROVAL OF ORDINANCE TO ZONE ANY PARCEL FOR UP TO 10 UNITS OF RESIDENTIAL DENSITY PER PARCEL IN CERTAIN CIRCUMSTANCES (SB 10)

(a) A local government may adopt an ordinance to zone a parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area or an urban infill site. This subsection shall not apply to either of the following:

(1) Parcels located within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This paragraph does not apply to sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(2) Any local restriction enacted or approved by a local initiative that designates publicly owned land as open-space land, as defined in subdivision (h) of Section 65560, or for park or recreational purposes.

(b) An ordinance adopted in accordance with this section, and any resolution to amend the jurisdiction's General Plan, ordinance, or other local regulation adopted to be consistent with that zoning ordinance, shall not constitute a "project" under CEQA.

(c) Notwithstanding any other law that allows ministerial or by right approval of a development project or that grants an exemption from CEQA, a residential or mixed-use residential project consisting of more than 10 new residential units on one or more parcels that are zoned pursuant to an ordinance adopted under this section shall not be approved ministerially or by right and shall not be exempt from CEQA. This subdivision, however, shall not apply to a project located on a parcel or parcels that are zoned pursuant to an ordinance adopted under this section, but subsequently rezoned without regard to this section. A subsequent ordinance adopted to rezone the parcel or parcels shall not be exempt from CEQA. Any environmental review conducted to adopt the subsequent ordinance shall consider the change in the zoning applicable to the parcel or parcels before they were zoned or rezoned pursuant to the ordinance adopted under this section.

Other regulations governing the approval of an ordinance under this section are set forth in Government Code section 65913.5.

9.06 HOUSING SUSTAINABILITY DISTRICTS.

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries. The general plan must contain seven mandatory elements, including a housing element. Existing law provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing. Senate Bill 73 authorizes a city, county, or city and county, including a charter agency, to establish by ordinance a housing sustainability district that meets specified requirements, including authorizing residential use within the district through the ministerial issuance of a permit. The agency is authorized to apply to the Department of Housing and Community Development for approval of a zoning incentive payment and requires the agency to provide specified information about the proposed housing sustainability district ordinance. The department is required to approve a zoning incentive payment if the ordinance meets the above-described requirements and the agency's housing element is in compliance with specified law.

A city, county, or city and county with a housing sustainability district would be entitled to a zoning incentive payment, subject to appropriation of funds for that purpose, and require that one-half of the amount be paid when the department approves the zone and one-half of the amount be paid when the department verifies that permits for the construction of the units have issued within the zone, provided that the city, county, or city and county has received a certificate of compliance for the applicable year. If the agency reduces the density of sites within the district from specified levels set forth in the Senate Bill 73, the agency would be required to return the full amount of zoning incentive payments it has received to the department. The bill also authorizes a developer to develop a project in a housing sustainability district in accordance with the already existing land use approval procedures that would otherwise apply to the parcel in the absence of the establishment of the housing sustainability district pursuant to its provisions, as provided.

As it relates specifically to CEQA, a Lead Agency designating a housing sustainability district is required to prepare an EIR pursuant to Government Code section 66201 to identify and mitigate, to the extent feasible, environmental impacts resulting from the designation. The EIR shall identify mitigation measures that may be undertaken by housing projects in the housing sustainability district to mitigate the environmental impacts identified in the EIR. Housing projects undertaken in the housing sustainability districts that meet specified requirements, including if the project satisfies certain design review standards applicable to development projects within the district provided the project is "complementary to adjacent buildings and structures and is consistent with the [agency's] general plan," are exempt under CEQA. (Reference: Pub. Resources Code, § 21155.10, 21155.11.)

9.07 INTERIM MOTEL HOUSING PROJECTS.

"Interim motel housing projects" are statutorily exempt from CEQA. A project is exempt from CEQA as an "interim motel housing project" where the project consists of the conversion of a structure with a certificate of occupancy as a motel, hotel, residential hotel, or hostel to supportive or transitional housing and the conversion meets at least one of the following conditions: (1) the conversion does not result in the expansion of more than 10 percent of the floor area of any individual living unit in the structure; and (2) the conversion does not result in any significant effects relating to traffic, noise, air quality, or water quality.

If the Agency determines that a project is exempt from CEQA as an interim motel housing project, it must file a Notice of Exemption with the State Clearinghouse.

(Reference: Pub. Resources Code, § 21080.50.)

9.08 SUPPORTIVE HOUSING AND "NO PLACE LIKE HOME" PROJECTS.

A decision by the Agency to seek funding from, or the Department of Housing and Community Development's awarding of funds pursuant to, the "No Place Like Home Program" (set forth in Part 3.9 of Division 5 of the Welfare and Institutions Code, commencing with Section 5849.1) does not constitute a "project" under CEQA.

"Supportive housing" in areas where multifamily and mixed uses are permitted may be a "use by right" and thus exempt from CEQA if the supportive housing project meets certain criteria set forth in Government Code section 65651. A "supportive housing" project is a project that provides housing with no limit on length of stay, that is occupied by persons within the target population—i.e., persons with disabilities, families who are homeless, or homeless youth—and that is linked to onsite or offsite services that assist the supportive housing resident to retain housing, improve their health status, and maximize their ability to live and, when possible, work in the community. A policy by a city or county to approve as a use by right proposed housing developments with a limit higher than 50 units does not constitute a "project" under CEQA. To see the requirements of the exemptions relating to supportive housing, please see Government Code section 65651.

If a No Place Like Home project is not exempt from CEQA under Government Code section 65651, the development applicant may request, within 10 days after the Agency determines the type of environmental documentation required for the project under CEQA, that the Agency prepare and certify the record of proceeding for the environmental review of the No Place Like Home project in accordance with Public Resources Code section 21186.

If the Agency approves or determines to carry out a No Place Like Home project that is subject to CEQA, the Agency shall file a notice of that approval or determination in accordance with the requirements of Public Resources Code section 21151, subdivision (a), except that the Notice of Determination shall be filed within two working days after the approval or determination becomes final. Likewise, if the Agency approves or determines to carry out a No Place Like Home project that is not subject to CEQA, the Agency shall file a Notice of Exemption in accordance with the requirements of Public Resources Code section 21152, subdivision (b), except that the Notice of Exemption shall be filed within two working days after the approval or determination becomes final.

(Reference: Pub. Resources Code, § 21163, *et seq.*; Gov. Code, § 65651; Health & Safety Code, § 50675.14.)

9.09 SHELTER CRISIS AND EMERGENCY HOUSING.

An action taken by certain cities, counties, or state agencies to lease, convey, or encumber land owned by a city or county—or an action to facilitate the lease, conveyance, or encumbrance of land owned by the local government—for, or to provide financial assistance to, a homeless

shelter constructed pursuant to the provisions of Government Code section 8698.4 is statutorily exempt from CEQA. This narrow exception applies to specified efforts to assist specified cities or counties that have declared a shelter crisis and seek to build a homeless shelter. To see all the requirements of this exemption, please see Government Code section 8698.4.

(Reference: Gov. Code, § 8698.4 [in effect until January 1, 2026].)

9.10 AFFORDABLE HOUSING DEVELOPMENTS IN COMMERCIAL ZONES.

A proposed affordable multifamily housing development project is subject to streamlined, ministerial review and is not subject to CEQA if it meets the following requirements:

1. One hundred percent of the units within the development project, excluding managers' units, must be dedicated to lower income households at an affordable cost, as defined by Section 50052.5 of the Health and Safety Code, or an affordable rent set in an amount consistent with the rent limits established by the California Tax Credit Allocation Committee. The units must be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.

2. The proposed development must meet applicable objective zoning standards, objective subdivision standards, and objective design review standards as further defined in Government Code section 65912.113(f) & (g).

3. The proposed housing development must meet certain density requirements set forth in Government Code section 65583.2(c)(3).

4. The project must be located in a zone where office, retail, or parking are a principally permitted use.

5. At least 75 percent of the perimeter of the project site must adjoin parcels that are developed with urban uses. Parcels that are only separated by a street or highway shall be considered adjoined.

6. The project may not be located on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use.

7. The project site must be located on a legal parcel or parcels that are either (a) in a city where the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau; or (b) in an unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

8. None of the proposed housing may be located within 500 feet of a freeway.

9. None of the proposed housing may be located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.

10. The project may not be located on a site that qualifies as either prime farmland or farmland of statewide importance.

11. The project site may not be located in wetlands.

12. The project site may not be located in a very high fire hazard severity zone.

13. The project site may not be located on a hazardous waste site, with limited exceptions as set forth in Government Code section 65913.4(a)(6)(E).

14. The project site may not be located within a delineated earthquake fault zone, unless the development complies with applicable seismic protection building code standards as set forth in Government Code section 65913.4(a)(6)(F).

15. The project may not be located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency ("FEMA").

16. The project site may not be located within a regulatory floodway as determined by FEMA, with limited exceptions as set forth in Government Code section 65913.4(a)(6)(H).

17. The project site may not be located on lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, habitat conservation plan pursuant to the federal Endangered Species Act, or other adopted natural resource protection plan.

18. The project site may not be located on habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act, the California Endangered Species Act, or the Native Plant Protection Act.

19. The project site may not be located on lands under conservation easement.

20. The project site may not be located on an existing parcel of land or site that is governed under the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

21. For a project proposed on a site within a neighborhood plan area, the applicable neighborhood plan must permit multifamily housing development on the site. Additional requirements apply to projects within a neighborhood plan area as of January 1, 2024, as set forth in Government Code section 65912.113(i).

22. For a project proposed on a vacant site, the project may not result in significant and unavoidable impacts to tribal cultural resources on the site.

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23. The development proponent must complete a Phase I Environmental Site Assessment, and the proponent must undertake additional measures if a recognized environmental condition is found as set forth in Government Code section 65912.113(c).

A project approved under this section must meet certain labor standards, as set forth in Government Code section 65912.130, et seq. For example, a private housing development project under this section is subject to a requirement that all construction workers employed in the execution of the development be paid 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.

(Reference: Gov. Code, § 65912.110, et seq.)

9.11 MIXED-INCOME HOUSING DEVELOPMENTS ALONG COMMERCIAL CORRIDORS.

A proposed multifamily housing development project is subject to streamlined, ministerial review and is not subject to CEQA if it meets the following requirements:

1. The proposed development project must meet all of the following affordability criteria, as set forth in greater detail in Government Code section 65912.122:

   (a)(1) A rental housing development shall include either of the following:

      (A) Eight percent of the units for very low income households and 5 percent of the units for extremely low income households; or

      (B) Fifteen percent of the units for lower income households.

   (2) The development proponent must agree to, and the local government must ensure, the continued affordability of all affordable rental units included pursuant to this section for 55 years.

   (b)(1) An owner-occupied housing development shall include either of the following:

      (A) Thirty percent of the units must be offered at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, to moderate-income households; or

      (B) Fifteen percent of the units must be offered at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, to lower income households.

   (2) The development proponent must agree to, and the local government must ensure, the continued affordability of all affordable rental units included pursuant to this section for 45 years.

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(c) If the local government has a local affordable housing requirement, the housing development project shall comply with all of the following:

(1) The development project shall include the percentage of affordable units required by this section or the local requirement, whichever is higher.

(2) The development project shall meet the lowest income targeting in either policy.

(3) If the local affordable housing requirement requires greater than 15 percent of the units to be dedicated for lower income households and does not require the inclusion of units affordable to very low and extremely low income households, then the rental housing development shall do both of the following:

(A) Include 8 percent of the units for very low income households and 5 percent of the units for extremely low income households; and

(B) Fifteen percent of units affordable to lower income households shall be subtracted from the percentage of units required by the local policy at the highest required affordability level.

(d) Affordable units in the development project shall have the same bedroom and bathroom count ratio as the market rate units, be equitably distributed within the project, and have the same type or quality of appliances, fixtures, and finishes.

2. The project site must abut a commercial corridor and have frontage along the commercial corridor of at least 50 feet.

3. The project site may not be greater than 20 acres.

4. The project must be located in a zone where office, retail, or parking are a principally permitted use.

5. At least 75 percent of the perimeter of the project site must adjoin parcels that are developed with urban uses. Parcels that are only separated by a street or highway shall be considered adjoined.

6. The project may not be located on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use.

7. The project site must be located on a legal parcel or parcels that are either (a) in a city where the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau; or (b) in an

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unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

8. The proposed development must meet applicable objective zoning standards, objective subdivision standards, and objective design review standards as further explained in Government Code section 65912.123(j).

9. The proposed housing development must meet certain density requirements set forth in Government Code section 65912.123(b).

10. The proposed housing development must meet certain height and setback requirements set forth in Government Code section 65912.123(c)-(d).

11. The project may not be located on a site where any of the following would apply:

    (a) The development would require the demolition of the following types of housing: (i) housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income; (ii) housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; (iii) or housing that has been occupied by tenants within the past 10 years, excluding any manager's units.

    (b) The site was previously used for permanent housing that was occupied by tenants, excluding any manager's units, that was demolished within 10 years before the development proponent submitted its application for the development.

    (c) The site would require the demolition of a historic structure that was placed on a national, state, or local historic register.

    (d) The property contains one to four dwelling units.

    (e) The property is vacant and zoned for housing but not for multifamily residential use.

    (f) The existing parcel of land or site is governed under the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act

12. None of the proposed housing may be located within 500 feet of a freeway.

13. None of the proposed housing may be located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.

14. The project may not be located on a site that qualifies as either prime farmland or farmland of statewide importance.

15. The project site may not be located in wetlands.

16. The project site may not be located in a very high fire hazard severity zone.

17. The project site may not be located on a hazardous waste site, with limited exceptions as set forth in Government Code section 65913.4(a)(6)(E).

18. The project site may not be located within a delineated earthquake fault zone, unless the development complies with applicable seismic protection building code standards as set forth in Government Code section 65913.4(a)(6)(F).

19. The project may not be located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency ("FEMA").

20. The project site may not be located within a regulatory floodway as determined by FEMA, with limited exceptions as set forth in Government Code section 65913.4(a)(6)(H).

21. The project site may not be located on lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, habitat conservation plan pursuant to the federal Endangered Species Act, or other adopted natural resource protection plan.

22. The project site may not be located on habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act, the California Endangered Species Act, or the Native Plant Protection Act.

23. The project site may not be located on lands under conservation easement.

24. For a project proposed on a site within a neighborhood plan area, the applicable neighborhood plan must permit multifamily housing development on the site. Additional requirements apply to projects within a neighborhood plan area as of January 1, 2024, as set forth in Government Code section 65912.121(i).

25. For a project proposed on a vacant site, the project may not result in significant and unavoidable impacts to tribal cultural resources on the site.

26. The development proponent must complete a Phase I Environmental Site Assessment, and the proponent must undertake additional measures if a recognized environmental condition is found as set forth in Government Code section 65912.123(f).

A project approved under this section must meet certain labor standards, as set forth in Government Code section 65912.130, et seq. For example, a private housing development project under this section is subject to a requirement that all construction workers employed in

the execution of the development be paid 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.

(Reference: Gov. Code, § 65912.120, et seq.)

9.12 A RESPONSIBLE AGENCY'S PROVISION OF FINANCIAL ASSISTANCE OR INSURANCE FOR THE DEVELOPMENT AND CONSTRUCTION OF AFFORDABLE HOUSING.

Action taken by a local agency that is acting as a responsible agency – not as a lead agency – to provide financial assistance or insurance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, is exempt from CEQA if the project that is the subject of the application for financial assistance or insurance will be subject to CEQA review by another public agency. This includes a local agency's approval of contracts that provide residential, counseling, and security services for people experiencing homelessness.

(Reference: Pub. Resources Code, § 21080.10.)

9.13 EXEMPTION FOR SPECIFIED AFFORDABLE HOUSING PROJECTS.

If the conditions and requirements set forth in Public Resources code section 21080.40 are met, the following public agency action relating to an "affordable housing project" shall be exempt from CEQA :

1. The issuance of an entitlement by a public agency for an affordable housing project.

2. An action to lease, convey, or encumber land owned by a public agency for an affordable housing project.

3. An action to facilitate the lease, conveyance, or encumbrance of land owned or to be purchased by a public agency for an affordable housing project.

4. Rezoning, specific plan amendments, or general plan amendments required specifically and exclusively to allow the construction of an affordable housing project.

5. An action to provide financial assistance in furtherance of implementing an affordable housing project.

Section 21080.40 of the Public Resources Code defines "affordable housing project" as a project that meets the following requirements:

- The project consists of multifamily residential uses only or a mix of multifamily residential and nonresidential uses;

- At least two-thirds of the square footage of the project is designated for residential use;

- All of the project's residential units, excluding managers' units, are dedicated to lower income households, as defined by Health & Safety Code section 50079.5;

- The project meets the labor requirements set forth in Government Code section 65912.130, or Government Code section 65912.131 if the project has 50 or more residential units;

- The project is located on a parcel in any of the following locations: (i) an urbanized area or urban cluster, as designated by the United States Census Bureau, (ii) within one-half mile walking distance to either a high-quality transit corridor or a major transit stop, (iii) a very low vehicle travel area (defined as an urbanized area where existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita), or (iv) proximal to six or more certain specified amenities, including within one-half mile of a bus station or ferry terminal, or within one mile (or two miles if in a rural area) of a supermarket or grocery store, public park, community center, pharmacy or drugstore, medical clinic or hospital, public library, or a school; and

- Parcels that are developed with urban uses must adjoin at least 75 percent of the perimeter of the project site or at least three sides of a four-sided project site.

To qualify for this exemption, the affordable housing project must meet a series of requirements set forth in Public Resources Code section 21080.40. The requirements include that the affordable housing project be subject to a recorded California Tax Credit Allocation Committee regulatory agreement for at least 55 years upon completion of construction, and that the project site must be adequately served by existing utilities or extensions. In addition, the public agency must confirm that the project is not built on environmentally sensitive or hazardous land; that the project will not have significant and unavoidable tribal cultural resource impacts; that a Phase I environmental assessment was prepared and any hazardous substances on the site have been remediated; and if the project site is not permitted for multifamily housing, that none of the housing is located within 500 feet of a freeway or within 3,200 feet of a facility that actively extracts or refines soil or natural gas; and that the project site is not within a very high fire hazard severity zone.

If a lead agency determines that the affordable housing project is exempt from CEQA pursuant to this provision, it must file a notice of exemption with the Office of Land Use and Climate Innovation and the county clerk of each county in which the project is located.

(Reference: Pub. Resources Code, § 21080.40.)

9.14 "NEAR MISS" STREAMLINED HOUSING DEVELOPMENT PROJECT

If a proposed housing development project would normally be exempt from CEQA pursuant to a statutory or categorical exemption (Classes 1 to 5, 12, 15, 20, 27, 30, or 32)—but fails to qualify because of just one specific issue—then CEQA review is limited to only the environmental effects caused by that one issue. The environmental review (initial study or EIR) only needs to

analyze impacts caused solely by that single disqualifying issue, based on evidence in the record. If an EIR is required, it does not need to analyze project alternatives or growth-inducing impacts.

This limited review does not apply if:

- The project is not similar to the types of projects covered by the exemption.
- The project fails the exemption because of more than one issue.
- The project includes a distribution center or oil and gas infrastructure.
- The project is located on protected natural lands (with limited statutory exceptions).

To note, "condition" means a physical feature, regulatory requirement, or environmental effect related to the project. For a project that involves issuance of a lease, permit, license, certificate, or other entitlement for use, the lead agency must offer early consultation – if requested by a potential applicant – before an application is filed. This consultation covers possible actions, alternatives, mitigation measures, and any potential and significant effects on the environment.

(Reference: Pub. Resources Code, § 21080.1.)

9.15 MINISTERIAL APPROVAL OF HOUSING DEVELOPMENTS ON LAND OWNED BY INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION AND RELIGIOUS INSTITUTIONS.

A "housing development project" is not subject to CEQA if it meets the criteria and requirements set forth in Government Code section 65913.16. To qualify for the exemption, a housing development project must, among other things, meet the following requirements:

1. The housing development project must be located on land owned on or before January 1, 2024 by an independent institution of higher education or a religious institution, including ownership through an affiliated or associated nonprofit public benefit corporation organized pursuant to the Nonprofit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code).

2. The housing development project must consist of residential units only; constitute a mixed-use development consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential use; or consist of transitional housing or supportive housing.

3. The housing development project must meet certain affordability requirements. One hundred percent of the development project's total units, exclusive of a manager's unit or units, must be for lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the total units in the development may be for moderate-income households, as defined in Section 50052 of the Health and Safety Code, and 5 percent of the units may be for staff of the independent institution of higher education or religious institution that owns the land.

4. The project must be subject to specified labor and prevailing wage requirements.

The exemption is subject to a lengthy series of locational and other requirements, set forth in Government Code section 65913.16.

(Reference: Gov. Code, § 65913.16.)

10. CEQA LITIGATION

10.01 TIMELINES.

When a CEQA lawsuit is filed, there are numerous and complex time requirements that must be met. Pressing deadlines begin to run in the days immediately after a CEQA lawsuit has been filed with the Court. For example, within ten (10) business days of the public agency being served with a petition or complaint alleging a violation of CEQA, the Agency, if it was the Lead Agency, must provide the petitioner with a list of Responsible Agencies and public agencies with jurisdiction by law over any natural resource affected by the project at issue. There are a variety of other deadlines that apply in CEQA litigation.

If a CEQA lawsuit is filed, CEQA counsel should be contacted immediately in order to ensure that all the applicable deadlines are met.

10.02 MEDIATION AND SETTLEMENT.

After Litigation Has Been Filed. The parties in a CEQA lawsuit are required to meet and discuss settlement. Within twenty (20) days of being served with a CEQA legal challenge, the public agency named in the lawsuit must file a notice with the court setting forth the time and place for a settlement meeting. The meeting must be scheduled and held not later than forty-five (45) days from the date of service of the petition or complaint upon the public agency. Usually the main parties to the litigation (such as the Lead Agency, the developer of the project if there is one, and those challenging the project and their respective attorneys) meet to discuss settlement; there is no requirement to hire a professional mediator. The settlement meeting is usually subject to a confidentiality agreement.

If the parties in a CEQA lawsuit are in settlement or mediation, that attempt is intended to occur concurrently with the litigation. This means that the respondent public agency will be required to comply with all existing litigation timelines and requirements (for example, preparing and lodging the administrative record discussed below) while simultaneously conducting settlement or mediation, unless the parties enter into an alternate agreement to stay the litigation and that agreement is approved by the court.

10.03 ADMINISTRATIVE RECORD.

A. Contents of Administrative Record.

When the Lead Agency's CEQA finding(s) and/or action is challenged in a lawsuit, the Lead Agency must certify the administrative record that formed the basis of the Lead Agency's decision. To the extent the documents listed below exist and are not subject to a privilege that exempts them from disclosure, the following items should be included in the administrative record:

(1) All project application materials.

(2) All staff reports and related documents prepared by the public agency with respect to its compliance with the substantive and procedural requirements of CEQA and with respect to the action on the project.

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(3) All staff reports and related documents prepared by the public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the public agency pursuant to CEQA or these Local Guidelines.

(4) Any transcript or minutes of the proceedings at which the decision-making body of the public agency heard testimony on or considered any environmental document on the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decision-making body prior to action on the environmental documents or on the project.

(5) All notices issued by the public agency to comply with CEQA or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the public agency with respect to compliance with CEQA or with respect to the project.

(8) Any proposed decisions or findings submitted to the decision-making body of the public agency by its staff or the project proponent, project opponents, or other persons, to the extent such documents are subject to public disclosure.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3) above, cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to CEQA.

(10) Any other written materials relevant to the respondent public agency's compliance with CEQA or to its decision on the merits of the project, including the initial study; any drafts of any environmental document, or portions thereof, that were released for public review; copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the public agency's files on the project; and internal agency communications presented to the final decision-making body or consulted and/or reviewed by the lead agency executive or other administrative official in a supervisory role, including staff notes and memoranda, related to the project or to compliance with CEQA, to the extent such documents are subject to public disclosure. The administrative record need not include communications that are of a logistical nature, such as meeting invitations or scheduling communications. The administrative record further may not include material that is subject to a privilege contained in the Evidence Code or material that is subject to an exemption set forth in the California Public Records Act.

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(11) The full written record before any inferior administrative decision-making body whose decision was appealed prior to the filing of the lawsuit.

B. Organization of Administrative Record.

The administrative record should be organized as follows:

(1) Index. A detailed index must be included at the beginning of the administrative record listing each document in the order presented. Each entry must include the document's title, date, brief description, and the volume and page where the document begins;

(2) The Notice of Determination;

(3) The resolutions or ordinances adopted by the Lead Agency approving the project;

(4) The findings required by Public Resources Code section 21081, including any statement of overriding considerations;

(5) The Final EIR, including the Draft EIR or a revision of the draft, all other matters included in the Final EIR (such as traffic studies and air quality studies), or other types of environmental documents prepared under CEQA, such as a negative declaration, mitigated negative declaration, or addenda;

(6) The initial study;

(7) Staff reports prepared for the administrative bodies providing subordinate approvals or recommendations to the Lead Agency, in chronological order;

(8) Transcripts and minutes of hearings, in chronological order; and

(9) All other documents appropriate for inclusion in the administrative record, in chronological order.

Each section listed above must be separated by tabs or marked with electronic bookmarks. Oversized documents (such as building plans and maps) must be presented in a manner that allows them to be easily unfolded and viewed.

The court may issue an order allowing the documents to be organized in a different manner.

C. Preparation of Administrative Record.

The administrative record can be prepared: (1) by the petitioner, if the petitioner provides the Lead Agency notice that it elects to prepare the record, or (2) by the Lead Agency. If the petitioner provides notice that it elects to prepare the administrative record, the Lead Agency may, within five (5) business days of receiving such notice, deny the petitioner's request to prepare the record. In this circumstance, the Lead Agency may prepare the administrative record itself despite the petitioner's election. The petitioner and the Lead Agency can also agree on any alternative

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method of preparing the record, such as having the project applicant prepare the administrative record. However, when a third party such as the project applicant prepares or assists with the preparation of the administrative record, the Lead Agency may not be able to recover fees incurred by the third party unless petitioner has agreed to this method of preparation.

Notwithstanding the above, upon the written request of a project applicant received no later than 30 days after the date that the Lead Agency makes a determination pursuant to Public Resources Code section 21080.1, 21094.5, or Chapter 4.2 (commencing with Public Resources Code section 21155) and with the written consent of the Lead Agency sent within 10 business days from receipt of the written request, the Lead Agency may prepare the administrative record concurrently with the administrative process. Should the Lead Agency and the project applicant so desire to pursue concurrent record preparation, the parties must comply with the provisions of Public Resources Code section 21167.6.2.

(See Pub. Resources Code, § 21167.6.)

D. Special Circumstances For Environmental Leadership Projects.

Special timing considerations and requirements apply if the Project is certified by the Governor as an Environmental Leadership Project pursuant to the "Jobs and Economic Improvement Through Environmental Leadership Act of 2021." For example, the administrative record must be finished and certified within five (5) days of project approval. See Public Resources Code section 21186 for a complete discussion of the special requirements related to the preparation of an administrative record for an Environmental Leadership Project.

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11. DEFINITIONS

Whenever the following terms are used in these Local Guidelines, they shall have the following meaning unless otherwise expressly defined:

11.01 "Agency" means the Santa Clarita Valley Water Agency.

11.02 "Agricultural Employee" means a person engaged in agriculture, which includes farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

This definition does not include any person covered by the National Labor Relations Act as agricultural employees pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code) and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code). This definition does not apply to employees who perform work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 United States Code section 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation. (State CEQA Guidelines section 15191(a).)

11.03 "Applicant" means a person who proposes to carry out a project that requires a lease, permit, license, certificate, or other entitlement for use, or requires financial aid from one or more public agencies when applying for governmental approval or assistance.

11.04 "Approval" Means a decision by the decision-making body or other authorized body or officer of the Agency which commits the Agency to a definite course of action with regard to a particular project. With regard to any project to be undertaken directly by the Agency, approval shall be deemed to occur on the date when the decision-making body adopts a motion or resolution determining to proceed with the project, which in no event shall be later than the date of adoption of plans and specifications. As to private projects, approval shall be deemed to have occurred upon the earliest commitment to provide service or the issuance by the Agency of a discretionary contract, subsidy, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project. The mere acquisition of land by the Agency shall not, in and of itself, be deemed to constitute approval of a project.

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For purposes of these Local Guidelines, all environmental documents must be completed as of the time of project approval.

11.05 "Baseline" refers to the pre-project environmental conditions. By comparing the project's potential impacts to the baseline, the Lead Agency determines whether the project's impacts are substantial enough to be significant under the relevant thresholds of significance. Generally, the baseline is the environmental conditions existing on the date the environmental analysis begins, such as the date the Notice of Preparation is published for an EIR or the date the Notice of Intent to Adopt a Negative Declaration is published. However, in certain circumstances, an earlier or later date may provide a more accurate environmental analysis. The Agency may establish any baseline that is appropriate, including an earlier or later date, as long as the choice of baseline can be supported by substantial evidence.

11.06 "California Native American Tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

11.07 "Categorical Exemption" means an exemption from CEQA for a class of projects based on a finding by the Secretary of the Resources Agency that the class of projects does not have a significant effect on the environment.

11.08 "Census-Defined Place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

11.09 "CEQA" means the California Environmental Quality Act, codified at California Public Resources Code sections 21000, et seq.

11.10 "Clerk" means either the "Clerk of the Board" or the "County Clerk" depending upon the county. Please refer to the "Index to Environmental Filing by County" in the Staff Summary to determine which applies.

11.11 "Community-Level Environmental Review" means either (1) or (2) below:

(1) An EIR certified for any of the following:

(a) A general plan;
(b) A revision or update to the general plan that includes at least the land use and circulation elements;
(c) An applicable community plan;
(d) An applicable specific plan; or
(e) A housing element of the general plan, if the Environmental Impact Report analyzed the environmental effects of the density of the proposed project;

(2) A Negative Declaration or Mitigated Negative Declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan or specific plan, provided that

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the subsequent environmental review document is allowed by CEQA following a Master EIR or a Program EIR or is required pursuant to Public Resource section 21166.

11.12 "Consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

11.13 "Cumulatively Considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

11.14 "Cumulative Impacts" means two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of separate projects, whether past, present or future.

The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present and reasonably foreseeable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

11.15 "Decision-Making Body" means the body within the Agency, e.g. the Board of Directors, which has final approval authority over the particular project.

11.16 "Developed Open Space" means land that meets each of the following three criteria:

(1) Is publicly owned, or financed in whole or in part by public funds;

(2) Is generally open to, and available for use by, the public; and

(3) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed Open Space may include land that has been designated for acquisition by a public agency for developed open space purposes, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

11.17 "Development Project" means any project undertaken for the purpose of development, including any project involving the issuance of a permit for construction or reconstruction but not a permit to operate. It does not include any ministerial projects

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proposed to be carried out or approved by public agencies. (Government Code section 65928.)

11.18 "Discretionary Project" means a project for which approval requires the exercise of independent judgment, deliberation, or decision-making on the part of the Agency. To determine whether a project is discretionary, the key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.

11.19 "EIR" means Environmental Impact Report, a detailed written statement setting forth the environmental effects and considerations pertaining to a project. EIR may mean a Draft or a Final version of an EIR, a Project EIR, a Subsequent EIR, a Supplemental EIR, a Tiered EIR, a Staged EIR, a Program EIR, a Redevelopment EIR, a Master EIR, or a Focused EIR.

11.20 "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, landslide or other natural disaster, as well as such occurrences as riot, war, terrorist incident, accident or sabotage.

11.21 "Endangered, Rare or Threatened Species" means certain species or subspecies of animals or plants. A species or subspecies of animal or plant is "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors. A species or subspecies of animal or plant is "Threatened" when it is listed as a threatened species pursuant to the California Endangered Species Act or the Federal Endangered Species Act. A species or subspecies of animal or plant is "Rare" when either:

(1) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(2) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act.

For purposes of analyzing impacts to biological resources, a species of animal or plant shall be presumed to be endangered, rare or threatened if it is listed under the California Endangered Species Act or the Federal Endangered Species Act.

This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by the Director of Food and Agriculture (with regard to economic pests) or the Director of Health Services (with regard to health risks).

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11.22 "Environment" means the physical conditions which exist in the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man-made conditions.

11.23 "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

11.24 "Final EIR" means an EIR containing the information contained in the Draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the Agency to the comments received.

11.25 "Greenhouse Gases" include, but are not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

11.26 "Guidelines" or "Local Guidelines" means the Agency's Local Guidelines for implementing the California Environmental Quality Act.

11.27 "Highway" shall have the same meaning as defined in Section 360 of the Vehicle Code.

11.28 "Historical Resources" include:

Resources listed in, or eligible for listing in, the California Register of Historical Resources shall be considered historical resources.

A resource may be listed in the California Register if it meets any of the following National Register of Historic Places criteria:

(a) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
(b) Is associated with the lives of persons important in our past;
(c) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
(d) Has yielded, or may be likely to yield, information important in prehistory or history.

A resource may also be listed in the California Register if it is identified as significant in an historical resource survey that meets all of the following criteria:

(a) The survey has been or will be included in the State Historic Resources Inventory;
(b) The survey and the survey documentation were prepared in accordance with office procedures and requirements; and

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(c) The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.

Resources included on a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution, or identified as significant in a historical resource survey (as described above) are presumed to be historically or culturally significant, unless a preponderance of evidence demonstrates that they are not historically or culturally significant.

Any of the following may be considered historically significant: any object, building, structure, site, area, place, record or manuscript which a Lead Agency determines, based upon substantial evidence in light of the whole record, to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California.

The Lead Agency is not precluded from determining that a resource is a historical resource, as defined in Public Resources Code sections 5020.1(j) or 5024.1, even if it is: (a) not listed in, or is not determined to be eligible for listing in, the California Register of Historical Resources; (b) not included in a local register of historical resources; or (c) not identified in a historical resources survey.

11.29 "Infill Site" means a site in an urbanized area that meets either of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been previously developed for qualified urban uses and both (a) and (b) are met:

(a) the site is immediately adjacent to parcels that are developed with qualified urban uses, or
1. 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 existing qualified urban uses at the time the Lead Agency receives an application for an approval; and
2. the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses;

(b) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(Public Resources Code section 21061.3.)

11.30 "Initial Study" means a preliminary analysis conducted by the Agency to determine whether an EIR, a Negative Declaration, or a Mitigated Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR.

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11.31 "Jurisdiction by Law" means the authority of any public agency to grant a permit or other entitlement for use, to provide funding for the project in question or to exercise authority over resources which may be affected by the project.

The Agency will have jurisdiction by law over a project when the Agency has primary and exclusive jurisdiction over the site of the project, the area in which the major environmental effects will occur, or the area in which reside those citizens most directly concerned by any such environmental effects.

11.32 "Land Disposal Facility" means a hazardous waste facility where hazardous waste is disposed in, on, or under land. (Health and Safety Code section 25199.1(d).)

11.33 "Large Treatment Facility" means a treatment facility which treats or recycles one thousand (1,000) or more tons of hazardous waste during any one month of the current reporting period commencing on or after July 1, 1991. (Health and Safety Code section 25205.1(d).)

11.34 "LCI" refers to the Governor's Office of Land Use and Climate Innovation (formerly known as the Office of Planning and Research, or OPR).

11.35 "Lead Agency" means the public agency which has the principal responsibility for preparing environmental documents and for carrying out or approving a project when more than one public agency is involved with the same underlying activity.

11.36 "Low- and Moderate-Income Households" means persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code—i.e., persons and families whose income does not exceed 120% of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. (Public Resources Code section 21159.20(d); State CEQA Guidelines section 15191(f).)

11.37 "Low-Income Households" means households of persons and families of very low and low income. Low-income persons or families are those eligible for financial assistance from governmental agencies for occupants of state-funded housing. Very low income persons are those whose incomes do not exceed the qualifying limits for very low income families as established and amended pursuant to Section 8 of the United States Housing Act of 1937. Such limits are published and updated in the California Code of Regulations. (Public Resources Code section 21159.20(c); Health and Safety Code sections 50105 and 50106; State CEQA Guidelines section 15191(g).)

11.38 "Low-Level Flight Path" means any flight path for any aircraft owned, maintained, or under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency or its successor.

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11.39 "Lower Income Households" is defined in Health and Safety Code section 50079.5 to mean any of the following:

11.40 "Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937;

(2) "Very low income households" means persons and families whose incomes do not exceed the qualifying limits for very low income families as defined in Health and Safety Code section 50105; or

(3) "Extremely low income households" means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as defined in Health and Safety Code section 50106.

11.41 "Major Transit Stop" means a site containing an existing rail or bus rapid 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 twenty (20) minutes or less during the morning and afternoon peak commute periods. (Pub. Resources Code, § 21064.3; see also Pub. Resources Code, § 21060.2; State CEQA Guidelines section 15191(i).)

11.42 "Metropolitan Planning Organization" or "MPO" means a federally-designated agency that provides transportation planning and programming in metropolitan areas. A MPO is designated for each urban area that has been defined in the most recent federal census as having a population of more than 50,000 people. There are 18 federally-designated MPOs in California. Non-urbanized (rural) areas do not have a designated MPO.

11.43 "Military Impact Zone" means any area, including airspace, that meets both of the following criteria:

(1) Is located within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(2) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

11.44 "Military Service" means the United States Department of Defense or any branch of the United States Armed Forces.

11.45 "Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog

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licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee. (Public Resources Code section 21080(b)(1).)

11.46 "Mitigated Negative Declaration" or "MND" means a Negative Declaration prepared for a Project when the Initial Study has identified potentially significant effects on the environment, but: (1) revisions in the project plans or proposals made, or agreed to, by the applicant before the proposed Negative Declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

11.47 "Mitigation" includes avoiding the environmental impact altogether by not taking a certain action or parts of an action, minimizing impacts by limiting the degree or magnitude of the action and its implementation, rectifying the impact by repairing, rehabilitating or restoring the impacted environment, reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, or compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

11.48 "Negative Declaration" or "ND" means a written statement by the Agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and, therefore, does not require the preparation of an EIR.

11.49 "Notice of Completion" means a brief report filed with the Office of Land Use and Climate Innovation by the Agency when it is the Lead Agency as soon as it has completed a Draft EIR and is prepared to send out copies for review.

11.50 "Notice of Determination" means a brief notice to be filed by the Agency when it approves or determines to carry out a project which is subject to the requirements of CEQA.

11.51 "Notice of Exemption" means a brief notice which may be filed by the Agency when it has approved or determined to carry out a project, and it has determined that the project is exempt from the requirements of CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project.

11.52 "Notice of Preparation" means a brief notice sent by a Lead Agency to notify the Responsible Agencies, Trustee Agencies, the Office of Land Use and Climate Innovation, and involved federal agencies that the Lead Agency plans to prepare an EIR for a project. The purpose of this notice is to solicit guidance from those agencies

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as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice.

11.53 "Oak" means a native tree species in the genus Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Public Resources Code section 4526, and that is five (5) inches or more in diameter at breast height. (Public Resources Code section 21083.4(a).)

11.54 "Oak Woodlands" means an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover. (Fish & Game Code section 1361(h).)

11.55 "Offsite Facility" means a facility that serves more than one generator of hazardous waste. (Public Resources Code section 21151.1(h).)

11.56 "Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, city, county, city and county, town, the state, and any of the agencies which may be political subdivisions of such entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions**.**

11.57 "Pipeline" as defined in these Local Guidelines depends on the context. Please see Local Guidelines Sections 3.10 and 3.11 for specific definitions.

11.58 "Private Project" means a project which will be carried out by a person other than a governmental agency, but which will need a discretionary approval from the Agency. Private projects will normally be those listed in subsections (2) and (3) of Local Guidelines Section 11.59.

11.59 "Project" means the whole of an action or activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment, and is any of the following:

(1) A discretionary activity directly undertaken by the Agency including but not limited to public works construction and related activities, clearing or grading of land, or improvements to existing public structures;

(2) A discretionary activity which involves a public agency's issuance to a person of a lease, permit, license, certificate, or other entitlement for use, or which is supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance by the Agency; or

(3) A discretionary project proposed to be carried out or approved by public agencies, including but not limited to the enactment and amendment of local General Plans or elements thereof, the enactment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps.

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The presence of any real degree of control over the manner in which a project is completed makes it a discretionary project.

The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

11.60 "Project-Specific Effects" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects. (Public Resources Code section 21065.3; State CEQA Guidelines section 15191(j).)

11.61 "Public Water System" means a system for the provision of piped water to the public for human consumption that has 3,000 or more service connections. A public water system includes all of the following: (A) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system; (B) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system; (C) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. (State CEQA Guidelines section 15155.)

11.62 "Qualified Urban Use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. (Public Resources Code section 21072; State CEQA Guidelines section 15191(k).)

11.63 "Residential" means a use consisting of either residential units only or residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15% of the total floor area of the project. (State CEQA Guidelines section 15191(l).) Residential, pursuant to Public Resources Code section 21159.24, shall mean a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 25 percent of the total building square footage of the project.

11.64 "Responsible Agency" means a public agency which proposes to carry out or approve a project for which a Lead Agency has prepared the environmental documents. For the purposes of CEQA, the term "Responsible Agency" includes all federal, state, regional and local public agencies other than the Lead Agency which have discretionary approval power over the project.

11.65 "Riparian areas" mean those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges

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of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

11.66 "Roadway" means a roadway as defined pursuant to Section 530 of the Vehicle Code and the previously graded and maintained shoulder that is within a roadway right-of-way of no more than five feet from the edge of the roadway.

11.67 "Significant Effect" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the activity including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

11.68 "Significant Value as a Wildlife Habitat" includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

11.69 "Special Use Airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency or its successor.

11.70 "Staff" means the General Manager or his or her designee**.**

11.71 "Standard" means a standard of general application that is all of the following:

(1) A quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;

(2) Adopted for the purpose of environmental protection;

(3) Adopted by a public agency through a public review process;

(4) Governs the same environmental effect which the change in the environment is impacting; and

(5) Governs the jurisdiction where the project is located.

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The definition of "standard" includes any thresholds of significance adopted by the Agency which meet the requirements of this Section.

If there is a conflict between standards, the Agency shall determine which standard is appropriate based upon substantial evidence in light of the whole record.

11.72 "State CEQA Guidelines" means the Guidelines for Implementation of the California Environmental Quality Act as adopted by the Secretary of the California Natural Resources Agency as they now exist or hereafter may be amended. (California Administrative Code, Title 14, sections 15000, et seq.)

11.73 "Substantial Evidence" means reliable information on which a fair argument can be based to support an inference or conclusion, even though another conclusion could be drawn from that information. "Substantial evidence" includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. "Substantial evidence" does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment.

11.74 "Sustainable Communities Strategy" is an element of a Regional Transportation Plan, which must be adopted by the Metropolitan Planning Organization for the region. (See Local Guidelines Section 11.40.) The Sustainable Communities Strategy is an integrated land use and transportation plan intended to reduce greenhouse gases. The Sustainable Communities Strategy includes various components such as: consideration of existing densities and uses within the region, identification of areas within the region that can accommodate an eight-year projection of the region's housing needs, development of projections for growth in the region, identification of existing transportation networks, and preparation of a forecast for development pattern for the region that can be integrated with transportation networks.

11.75 "Tiering" means the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:

(a) From a general plan, policy, or Program EIR to a program, plan, or policy EIR of lesser scope or to a site-specific EIR; or

(b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the Lead Agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

(Public Resources Code sections 21003, 21061 and 21100.)

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11.76 "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.

11.77 "Transit Priority Project" means a mixed use project that 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 California Air Resources Board 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 emission reduction targets. Such a project may be exempt from CEQA if a detailed laundry list of requirements is met. To qualify for the exemption, the Transit Priority Project must:

(1) contain at least 50 percent residential use based on total building square footage;

(2) if the project contains between 26 percent and 50 percent non-residential uses, the floor-to-area ratio (FAR) must be at least 0.75;

(3) have a minimum net density of 20 dwelling units per acre;

(4) be located within a half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan; and

(5) meet all the requirements of Public Resources Code section 21155.1.

11.78 "Transportation Facilities" includes major local arterials and public transit within five (5) miles of the project site, and freeways, highways, and rail transit service within ten (10) miles of the project site.

11.79 "Tribal Cultural Resources" are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(a) Included or determined to be eligible for inclusion in the California Register of Historical Resources.
(b) Included in a local register of historic resources as defined in subdivision (k) of Public Resources Code section 5020.1.

(2) A resource determined by the Lead Agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this definition, the Lead Agency shall consider the significance of the resource to a California Native American tribe.

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A cultural landscape that meets the criteria set forth above is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

A historic resource described in Public Resources Code section 21084.1, a unique archaeological resource as defined in subdivision (g) of Public Resources Code section 21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of Public Resources Code section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of Tribal cultural resources.

11.80 "Trustee Agency" means a State agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee Agencies may include, but are not limited to, the following:

(a) The California Department of Fish and Wildlife ("DFW") with regard to the fish and wildlife of the state, designated rare or endangered native plants, and game refuges, ecological reserves, and other areas administered by DFW;
(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands;
(c) The State Department of Parks and Recreation with regard to units of the State Park System;
(d) The University of California with regard to sites within the Natural Land and Water Reserve System; and/or
(e) The State Water Resources Control Board with respect to surface waters.

11.81 "Urban Growth Boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side of the boundary.

11.82 "Urbanized Area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least one hundred thousand (100,000) persons;

(2) An unincorporated area that meets both of the following requirements:

(a) The unincorporated area is either:
(i) completely surrounded by one or more incorporated cities, has a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and has a population density that at least equals the population density of the surrounding city or cities; or
(ii) located within an urban growth boundary and has an existing residential population of at least five thousand (5,000) persons per square mile. An "urban growth boundary" means a

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provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(b) The board of supervisors with jurisdiction over the unincorporated area has taken all three of the following steps:

1. Prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and protects the environment, open space and agricultural areas;
2. Submitted the draft document to the Office of Land Use and Climate Innovation and allowed LCI thirty (30) days to submit comments on the draft finding to the board; and
3. At least thirty (30) days after submitting the draft document to the Office of Land Use and Climate Innovation, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document.

(Public Resources Code sections 21083, 21159.20-21159.24; State CEQA Guidelines section 15191(m).)

11.83 "Water Acquisition Plans" means any plans for acquiring additional water supplies prepared by the public water system or a city or county Lead Agency pursuant to subdivision (a) of section 10911 of the Water Code.

11.84 "Water Assessment" or "Water Supply Assessment" means the water supply assessment that must be prepared by the governing body of a public water system, or a city or county, pursuant to and in compliance with sections 10910 to 10915 of the Water Code, and that includes, without limitation, the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g) of section 10910 of the Water Code.

11.85 "Water Demand Project" means any one of the following:

(A) A residential development of more than 500 dwelling units;

(B) A shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space;

(C) A commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space;

(D) A hotel or motel, or both, having more than 500 rooms;

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(E) An industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area;

Except, a proposed photovoltaic or wind energy generation facility approved on or after October 8, 2011, is not a Water Demand Project if the facility would demand no more than 75 acre-feet of water annually.

(F) A mixed-use project that includes one or more of the projects specified in subdivisions (A); (B), (C), (D), (E), or (G) of this section;

(G) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project; or

(H) For public water systems with fewer than 5,000 service connections, a project that meets the following criteria:

(1) A proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of a public water system's existing service connections; or

(2) A mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(State CEQA Guidelines section 15155.)

11.86 "Waterway" means a bay, estuary, lake, pond, river, slough, or a perennial, intermittent, or ephemeral stream, lake, or estuarine-marine shoreline.

11.87 "Wetlands" has the same meaning as that term is construed in the regulations issued by the United States Army Corps of Engineers pursuant to the Clean Water Act. Thus, "wetlands" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. (Public Resources Code section 21159.21(d), incorporating Title 33, Code of Federal Regulations, section 328.3.)

11.88 "Wildlife Habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection. (Public Resources Code section 21159.21.)

11.89 "Zoning Approval" means any enactment, amendment, or appeal of a zoning ordinance; granting of a conditional use permit or variance; or any other form of land

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use, subdivision, tract, or development approval required from the city or county having jurisdiction to permit the particular use of the property.

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12. FORMS

See forms A – S which accompany these Guidelines.

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13. COMMON ACRONYMS

A. **********

ADEIR – Administrative Draft Environmental Impact Report
AQMD – Air Quality Management District
AQMP – Air Quality Management Plan
AR – Administrative Record
ARB – Air Resources Board

B. **********

BMP – Best Management Practices
BO – Biological Opinion

C. **********

Cal EPA – California Environmental Protection Agency
CAP – Climate Action Plan
CCAA – California Clean Air Act
CCR – California Code of Regulations (Title 14 Sections 15000 et seq. are also known as the State CEQA Guidelines.)
CE – Categorical Exclusion (NEPA)
CESA – California Endangered Species Act
CEQA – California Environmental Quality Act
CFR – Code of Federal Regulations
CMP – Congestion Management Plan
CRWQCB – California Regional Water Quality Control Board

D. **********

DEIR – Draft Environmental Impact Report
DFW – Department of Fish and Wildlife

E. **********

EA – Environmental Assessment (NEPA term)
EIR – Environmental Impact Report
EIS – Environmental Impact Statement (NEPA term)
EPA – Environmental Protection Agency
ESA – Endangered Species Act; Environmental Site Assessment

F. **********

FCAA – Federal Clean Air Act
FEIR – Final Environmental Impact Report
FOIA – Freedom of Information Act (Federal)
FONSI – Finding of No Significant Impact (NEPA term)
FWS – Fish and Wildlife Service

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G. **********

GHG – Greenhouse Gas
GW – Ground Water

H. **********

HH&E – Human Health and Environment
HRA – Health Risk Assessment
HS – Hazardous Substance

I. **********

IS – Initial Study

J. **********

K. **********

L. **********

LADD – Lifetime Average Daily Dose; Lowest Acceptable Daily Dose
LCI – Office of Land Use and Climate Innovation (formerly Office of Planning and Research or OPR)
LEA – Local Enforcement Agency
LESA – Land Evaluation and Site Assessment
LUFT – Leaking Underground Fuel Tank
LUST – Leaking Underground Storage Tanks. Reference Part 213 of Public Act 451 of 1994.

M. **********

MEIR – Master Environmental Impact Report
MMRP – Mitigation Monitoring and Reporting Plan
MPO – Metropolitan Planning Organization
MND – Mitigated Negative Declaration

N. **********

ND – Negative Declaration
NEPA – National Environmental Policy Act
NOA – Notice of Availability
NOC – Notice of Completion
NOD – Notice of Determination
NOE – Notice of Exemption
NOI – Notice of Intent
NOP – Notice of Preparation
NOV – Notice of Violation

O. **********

P. **********

PEIR – Program Environmental Impact Report. Sometimes also used to describe a Project Environmental Impact Report
PM – Particulate Matter
PRA – Public Records Act
PSA – Permit Streamlining Act

Q. **********

R. **********

RCRA – Resource Conservation and Recovery Act (1976) Governs definition, handling, and disposal of hazardous waste.

S. **********

SCH – State Clearinghouse
SEIR – Supplemental or Subsequent Environmental Impact Report
SMARA – Surface Mining and Reclamation Act
SWMP – Stormwater Monitoring Program
SWPPP – Stormwater Pollution Prevention Program

T. **********

TCM – Transportation Control Measure
TCP – Transportation Control Plan
TDS – Total Dissolved Solids
TMP – Transportation Management Plan
Title V – refers to Title V of the Clean Air Act related to ambient air quality provisions
TLV – Threshold Limit Value

U. **********

UBC – Uniform Building Code
UFC – Uniform Fire Code
UGST – Underground Storage Tank
USDW – Underground Source of Drinking Water
UWMP – Urban Water Management Plan

V. **********

VOC – Volatile Organic Compounds (Health & Safety Code, section 25123.6.)
VOS – Vehicle Operating Survey

W. **********

WQS – Water Quality Standard
WSA – Water Supply Assessment

WTP – Water Treatment Plant. A facility designed to provide treatment to water.
WWTP – Wastewater Treatment Plan

X. **********

Y. **********

Z. **********