

Title 14

NOTICE OF PROPOSED RULEMAKING

AMENDMENTS AND ADDITIONS TO THE STATE CEQA GUIDELINES

CALIFORNIA NATURAL RESOURCES AGENCY

January 26, 2018

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

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

STATUTORY AUTHORITY

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

PROPOSED ACTION

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

Add sections: 15064.3 and 15234.

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

PUBLIC HEARINGS

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

Sacramento

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

Los Angeles

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

WRITTEN COMMENT PERIOD

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

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

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

Email: CEQA.Guidelines@resources.ca.gov.

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

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

AUTHORITY AND REFERENCE

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

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

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

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

Anticipated Benefits of the Proposed Regulations

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

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

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

Evaluation of Consistency/Compatibility with Existing State Regulations

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

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

15004. TIME OF PREPARATION

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

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

15064.3. DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS

[New Section]

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

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

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

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