

ASSOCIATION
OF
ENVIRONMENTAL PROFESSIONALS

March 15, 2018

VIA E-MAIL

Christopher Calfee, Deputy Secretary and General Counsel
California Natural Resources Agency
1416 Ninth Street, Suite 1311
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Fax: 916-653-8102
Email: CEQA.Guidelines@resources.ca.gov

**Re: AEP Comments on the Amendments and Additions to the State CEQA Guidelines
by the California Natural Resources Agency**

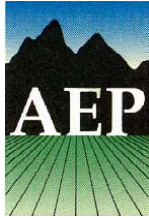
Dear Mr. Calfee:

On behalf of the Association of Environmental Professionals (AEP), I appreciate the opportunity to provide comments on the proposed *Amendments and Additions to the State CEQA Guidelines* (“Proposed Amendments”) by the California Natural Resources Agency (“Agency”). AEP recognizes the tremendous efforts required by the Agency and the California Office of Planning and Research’s (OPR) in drafting the Proposed Amendments, and we commend both the Agency and OPR for their collective leadership on this important issue.

AEP is a non-profit organization of California’s environmental professionals. AEP members are involved in every stage of the evaluation, analysis, assessment, and litigation of projects subject to the California Environmental Quality Act (CEQA). For over thirty years, AEP has dedicated itself to improving the technical expertise and professional qualifications of its membership, as well as educating the public on the value of California’s laws protecting the environment, managing our natural resources, and promoting responsible land use and urban growth. AEP’s membership is broad and diverse, incorporating environmental and legal professionals from public agencies, the private sector and non-governmental organizations.

Generally, AEP supports the amendments proposed. There are certain issues AEP believes warrants renewed consideration and further edit. To that end, AEP’s comments on the Proposed Amendments is included as Attachment 1 hereto. The first column of Attachment 1 contains OPR’s proposed changes. The second column contains AEP’s suggested edits to those proposed changes (with blue underscore indicating suggested additional text and ~~red strikethrough~~ indicating suggested deletions). AEP’s rationales for any suggest edits are contained in the third column.

Thank you for the continued opportunity to play an active role in this process. Should you have any questions or need additional information regarding our comments, please do not hesitate to



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contact me or our Capital lobbyist, Matt Klopfenstein at (916) 930 – 0796
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Sincerely,

Devon Muto

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March 15, 2018

AEP comments regarding the proposed *Amendments and Additions to the State CEQA Guidelines* ("Proposed Amendments") by the California Natural Resources Agency ("Agency")

Proposed CEQA Guidelines Section 15061 ¹	Suggested change	Rationale
<p>§ 15061. Review for Exemption ... (b) A project is exempt from CEQA if: (1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260). (2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2. (3) The activity is covered by the general rule common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. (4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)). (5) The project is exempt pursuant to the provisions of Article 12.5 of this Chapter.</p>	<p>§ 15061. Review for Exemption ... (b) A project is exempt from CEQA if: (1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260). (2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2. (3) The activity is covered by the general rule common sense exemption exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. (4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)). (5) The project is exempt pursuant to the provisions of Article 12.5 of this Chapter.</p>	<p>AEP notes that 15061(b)(3) is referred to by CEQA practitioners and courts as the "common sense exemption," rather than "exception." See e.g., <i>Muzzy Ranch Co. v. Solano County Airport Land Use Com.</i> (2007) 41 Cal. 4th 372, 389 (noted in the authority cited by the Proposed Amendments in support of the change). If a project qualifies under Section 15061, the project is <i>exempt</i> from CEQA. "Exceptions" to categorical exemptions are described in CEQA Guidelines § 15300.2. When an "exception" to an exemption applies, the project <i>is</i> subject to CEQA.</p> <p>Referring to the common sense rule as an "exception" (rather than "exemption") may create unnecessary confusion and not align with practitioners' customary use of the term "common sense exemption."</p>
<p>Proposed CEQA Guidelines Section 15064.3</p>	<p>Suggested change</p>	<p>Rationale</p>

¹ For ease of reference, only excerpts of CEQA Guidelines text relevant to AEP's suggested edits are included here.

March 15, 2018

AEP comments regarding the proposed *Amendments and Additions to the State CEQA Guidelines* ("Proposed Amendments") by the California Natural Resources Agency ("Agency")

<p>§ 15064.3. Determining the Significance of Transportation Impacts ...</p> <p>(b) Criteria for Analyzing Transportation Impacts.</p> <p>(1) Land Use Projects. ...</p> <p>(2) Transportation Projects. ...</p> <p>(3) Qualitative Analysis. ...</p> <p>(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.</p> <p>(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, 2019, the provisions of this section shall apply statewide.</p>	<p>§ 15064.3. Determining the Significance of Transportation Impacts ...</p> <p>(b) Criteria for Analyzing Transportation Impacts.</p> <p>(1) Land Use Projects. ...</p> <p>(2) VMT Reduction Plans. If a local jurisdiction, regional transportation authority, association of governments, or metropolitan planning organization (MPO) has developed and adopted a regional or sub-regional VMT Reduction Plan with the goal of reducing VMT consistent with the regional VMT reduction targets, then Land Use Projects that are compliant with the VMT Reduction Plan should be considered to have less than significant transportation impacts.</p> <p>(23) Transportation Projects. ...</p> <p>(34) Qualitative Analysis. ...</p> <p>(45) 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, per service population, 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.</p> <p>(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, 2019 January 1, 2020, the provisions of this section shall apply statewide.</p>	<p>Consistent with OPR’s guidance on evaluating transportation impacts under SB 743, AEP suggests the addition of a new Section (b)(2) to include the ability of a Lead Agency to use an adopted VMT Reduction Plan, compliance with which would demonstrate less than significant transportation impacts.</p> <p>AEP also suggests that the current Section (b)(4) (Methodology) add reference to “service population” as an appropriate basis to express change in VMT, as specified in the updated SB 743 Guidelines.</p> <p>Under the current Section (c) (Applicability), AEP suggests that the grace period for mandatory application of the proposed VMT thresholds remain January 1, 2020 as proposed by OPR.</p>
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March 15, 2018

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Proposed CEQA Guidelines Section 15064.4	Suggested change	Rationale
<p>§ 15064.4. Determining the Significance of Impacts from Greenhouse Gas Emissions</p> <p>...</p> <p>(b)</p> <p>...</p> <p>(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 <u>(see, e.g., section 15183.5(b))</u>. 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. <u>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.</u></p> <p>...</p>	<p>§ 15064.4. Determining the Significance of Impacts from Greenhouse Gas Emissions</p> <p>...</p> <p>(b)</p> <p>...</p> <p>(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 <u>(see, e.g., section 15183.5(b))</u>. 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. <u>In determining the significance of impacts, the lead agency may consider a project's consistency with the State's legislatively adopted 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.</u></p> <p>...</p>	<p>AEP supports the changes made in Sections (a) and (b). Specifically, changing "should" to "shall" in Section (a) and the edits in Section (b) noting the determination of significance should be based on the evolving state of scientific knowledge and state regulatory schemes.</p> <p>AEP suggests that Section 15064.4(b)(3) clarify that the lead agency may consider a project's consistency with the State's long-term climate change goals, but is only required to consider <i>legislatively</i> adopted target years (e.g., 2030 targets adopted under Senate Bill 32, but not 2050 targets described in Executive Order S-03-05).</p>
<p>Proposed CEQA Guidelines Section 15125</p>	<p>Suggested change</p>	<p>Rationale</p>

March 15, 2018

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<p>§ 15125. Environmental Setting (a) An EIR must include a description of the 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, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives. <u>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.</u></p> <p><u>(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, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, that are supported with substantial evidence. In addition, a 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.</u></p> <p><u>(2) A lead agency may use either a historic conditions baseline or a projected future conditions baseline 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.</u></p> <p>...</p>	<p>§ 15125. Environmental Setting (a) An EIR must include a description of the 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, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to 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.</p> <p><u>(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, a lead agency may define existing conditions by referencing historic conditions, average conditions over time, or conditions expected when the project becomes operational, that are supported with substantial evidence. In addition, a lead agency may also choose to use multiple baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.</u></p> <p><u>(2) A lead agency may use either a historic conditions baseline or a projected future conditions baseline 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.</u></p> <p>...</p>	<p>AEP suggests the edits of Section (a) as we feel it is unnecessary and could create inadvertent conflicts with existing CEQA standards. AEP also suggests the changes to Section (a)(1) to clarify that using multiple baselines is acceptable, based on any of the methods listed in this section.</p> <p>Further, AEP strongly requests deleting the reference to a "historic conditions baseline" from proposed Section (a)(2).</p> <p><i>Neighbors for Smart Rail v. Exposition Metro Line Construction Authority</i> (2013) 57 Cal. 4th 439 ("NSFR") addressed the heightened evidentiary standard required in support the sole use of hypothetical future conditions. See <i>NSFR</i>, 57 Cal.4th at 457 ("while an agency preparing an EIR does have discretion to omit an analysis of the project's significant impacts on existing environmental conditions and substitute a baseline consisting of environmental conditions projected to exist in the future, the agency must justify its decision by showing an existing conditions analysis would be misleading or without informational value"). This is appropriately captured by the proposed text in Section (a)(2).</p> <p>However, the use of a "historic conditions baseline" was not at issue in <i>NSFR</i> and, as clearly articulated by <i>Association of Irrigated Residents v. Kern County</i> (2017) 17 Cal.App.5th 708 ("AIR"), the heightened evidentiary standards applicable to hypothetical future conditions are not applicable to the use of historic baseline conditions. See <i>AIR</i>, 17 Cal.App.5th at 731 (noting <i>NSFR</i>'s principles as applicable for the sole use of hypothetical future conditions as baseline, and <i>Communities for a Better Environment v. South Coast Air Quality Management Dist.</i> (2010) 48 Cal.4th 310 ("CBE") principles as applicable to the use of historic baseline conditions). AEP also understands that the California Supreme Court denied a petition for <i>AIR</i>'s review, as well as requests for depublication. AEP suggests that <i>AIR</i> be added to the list of Authority cited.</p> <p>AEP is also concerned that Section (a)(2)'s reference to "historic conditions baseline" may be argued to require the use of a historic conditions baseline where the existing conditions are the alleged product of unlawful prior development. Under this interpretation, the use of a historic conditions baseline would be arguably necessary as the use of the "existing conditions" baseline would be "misleading" in light of the allegedly unlawful development. As such, Section (a)(2)'s reference to "historic conditions baseline" is contrary to the long-standing and established principle under CEQA that prior development and activity, even if unlawful, is properly included within the baseline for the evaluation of proposed projects. See <i>Riverwatch v. County of San Diego</i> (1999), 76 Cal.App.4th 1428 (baseline properly included illegal development at mining operation seeking use permit); <i>Fat v. County of Sacramento</i> (2002) 97 Cal.App.4th 1270 (baseline properly included approximately 30 years of local airport development without County authorization); <i>Citizens for East Shore Parks v. California State Lands Com.</i> (2011) 202 Cal.App.4th 549 (baseline properly included current conditions).</p> <p>This interpretation would allow for CEQA's abuse as, based on a mere accusation of unlawful prior development, Section (a)(1)'s general presumption that the existing physical conditions at the time of the notice of preparation ("NOP") would be gutted. Further, the creation of a "historic conditions baseline" would be exceedingly difficult to implement in practice: it would be highly speculative, subject to inaccuracies and bias, and plagued by a lack of sound, substantial evidence establishing historical environmental conditions. Lastly, it is unnecessary and unwise, for all the reasons cited by the <i>Riverwatch</i>, <i>Fat</i>, and <i>East Shore Parks</i> cases, among others.</p> <p>For the foregoing reasons, AEP strongly requests deleting the reference to a "historic conditions baseline"</p>
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March 15, 2018

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<p>AUTHORITY: Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21060.5, 21061 and 21100, Public Resources Code; <i>Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (2013) 57 Cal. 4th 439; Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310; Cherry Valley Pass Acres & Neighbors v. City of Beaumont (2010) 190 Cal.App.4th 316</i>; E.P.I.C. v. County of El Dorado (1982) 131 Cal. App. 3d 350; San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713; Bloom v. McGurk (1994) 26 Cal.App.4th 1307.</p>	<p>AUTHORITY: Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21060.5, 21061 and 21100, Public Resources Code; <i>Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (2013) 57 Cal. 4th 439; Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310; Association of Irrigated Residents v. Kern County (2017) 17 Cal.App.5th 708; Cherry Valley Pass Acres & Neighbors v. City of Beaumont (2010) 190 Cal.App.4th 316</i>; E.P.I.C. v. County of El Dorado (1982) 131 Cal. App. 3d 350; San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713; Bloom v. McGurk (1994) 26 Cal.App.4th 1307.</p>	<p>from proposed Section (a)(2).</p>
<p>Proposed CEQA Guidelines Section 15234</p>	<p>Suggested change</p>	<p>Rationale</p>
<p>§ 15234. Remand ... <u>(d) As to those portions of an environmental document that a court finds to comply with CEQA, additional environmental review shall only be required as required by the court consistent with principles of res judicata.</u></p>	<p>§ 15234. Remand ... <u>(d) As to those portions of an environmental document that a court finds to comply with CEQA, additional environmental review shall only be required as required by the court consistent with principles of res judicata. <u>In general, the lead agency need not reanalyze project impacts to resources beyond what is necessary to respond to the court's decision, except under the circumstances described in Sections 15088.5 and 15162.</u></u></p>	<p>AEP acknowledges that, ultimately, a judge's authority to fashion a remedy originates in equity, and the CEQA Guidelines, which are only regulations, do not constrain or bind a court's authority.</p> <p>However, litigants regularly argue that, although portions of a project approval could be left standing at a judge's discretion, portions of an EIR/MND cannot. In other words, the whole EIR/MND must be set aside even if the adjudged defect is limited to only one limited section.</p> <p>AEP suggests the additional language in subparagraph (d) in order to clearly indicate that it is acceptable under CEQA to re-do portions of the EIR and/or re-analyze impacts on resource areas <i>only</i> to the extent necessary to respond to the court's decision. AEP believes that bolstering and clarifying the language in this remand section could potentially help streamline CEQA processes and curb abuses.</p>
<p>Proposed CEQA Guidelines Section 15357</p>	<p>Suggested change</p>	<p>Rationale</p>

March 15, 2018

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<p>§ 15357.Discretionary Project "Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations, or other fixed standards. The key question is whether the approval process involved allows the public agency to shape the project in any way that could materially respond to any of the concerns which might be raised in an environmental impact report. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).</p>	<p>§ 15357.Discretionary Project "Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations, or other fixed standards. The key question is whether the approval process involved allows the public agency to shape the project in any way that could materially respond to any of the concerns which might be raised in an environmental impact report. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c). The lead agency's grant of a variance from applicable statutes, ordinances, regulations, or other fixed standards constitutes a discretionary action.</p>	<p>AEP suggests the deletion of the sentence beginning with "The key question...." The addition of the words "or other fixed standards" is sufficient to generally distinguish between discretionary or ministerial projects.</p> <p>Further, various terms in the sentence beginning with "The key question..." are vague and may inadvertently create uncertainties and foster litigation. For example, AEP is concerned with the term "shape the project" as it is vague and does not necessarily help to distinguish between ministerial and discretionary actions, as both may be interpreted as helping to "shape the project." Further, it may inadvertently invite disputes over what constitutes a project for purposes of CEQA – disputes which currently do not take place. Moreover, the phrase "which might be raised in an environmental impact report" may create confusion in that discretionary projects do not require EIRs <i>per se</i> and may, of course, be approved by way of negative declaration or exemption.</p> <p>AEP also suggests the granting of a variance as a further example of a discretionary action.</p>
Updating the Environmental Checklist		
Proposed Amendments to Appendix G	Suggested change	Rationale
<p>I. AESTHETICS -- Would the project: a) Have a substantial adverse effect on a scenic vista? ...</p>	<p>I. AESTHETICS -- Would the project: a) Have a substantial adverse effect on a designated scenic vista, designated scenic resource, or within a designated scenic highway? ...</p>	<p>AEP suggests the additional language in question (a) to clarify that the project should evaluate impacts to <i>designated</i> scenic vistas and resources. AEP believes these edits resolve the ambiguous and highly subjective language which leaves open whether a project should look at impacts to scenic vistas and resources <i>only</i> if they are designated as such, or just in general.</p>

March 15, 2018

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<p>III. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:</p> <p>a) Conflict with or obstruct implementation of the applicable air quality plan?</p> <p>b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?</p> <p>e) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?</p> <p>c d) Expose sensitive receptors to substantial pollutant concentrations?</p> <p>d e) <u>Create objectionable Result in other emissions (such as those leading to odors or dust) adversely</u> affecting a substantial number of people?</p>	<p>III. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:</p> <p>a) Conflict with or obstruct implementation of the applicable air quality plan?</p> <p>b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?</p> <p>e) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? <u>In determining a project's net increase of ozone a Lead Agency may use ozone precursors emitted by the project.</u></p> <p>c d) Expose sensitive receptors to substantial pollutant concentrations <u>or exacerbate existing air quality hazards onsite?</u></p> <p>d e) <u>Create objectionable Result in other emissions (such as those leading to odors</u> or dust <u>) adversely</u> affecting a substantial number of people?</p>	<p>AEP notes that question (b) has been deleted and combined with question (c). However, both volatile organic compounds (VOCs) and reactive organic compounds (ROGs) would need to be considered for their contribution to the ozone standard, despite the fact that these pollutants are not considered criteria air pollutants. AEP suggests additional language be added to question (b) clarifying that the evaluation of a project's ozone precursor emissions is an acceptable manner to evaluate a project's potential impacts on the cumulative concentration of ozone.</p> <p>Regarding new question (c), AEP recommends additional language consistent with the California Supreme Court's "CEQA-in-reverse" decision in <i>California Building Industry Association v. Bay Area Air Quality Management District</i> (1st Dist., Div. 5, 2016) 2 Cal.App.5th 1067.</p> <p>For new question (d), AEP notes that the evaluation of a project's odors is a substantially different undertaking than the evaluation of fugitive dust. Fugitive dust (particulate matter 10 (PM10) and particulate matter 2.5 (PM2.5)) should be analyzed under the criteria pollutant inquiry in new section (b). Therefore, AEP recommends striking the term "or dust."</p>
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<p>XVII. TRANSPORTATION/TRAFFIC. Would the project:</p> <p>a) Conflict with an an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of addressing the circulation system, including transit, roadways, bicycle lanes and pedestrian paths? taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?</p> <p>b) For a land use project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(1)? Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?</p> <p>c) For a transportation project, would the project conflict with or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(2)? Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?</p> <p>d) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?</p> <p>e) Result in inadequate emergency access?</p> <p>f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?</p>	<p>XVII. TRANSPORTATION/TRAFFIC. Would the project:</p> <p>a) Conflict with an an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of addressing the circulation system, including transit, roadways, bicycle lanes and pedestrian paths? taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?</p> <p>b) For a land use project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(1) or (b)(2)? Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?</p> <p>c) For a transportation project, would the project conflict with or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(2)? Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?</p> <p>d) c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?</p> <p>e) d) Result in inadequate emergency access?</p> <p>f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?</p>	<p>AEP recommends that questions b) and c) in this section are combined into one threshold question referencing CEQA Guidelines § 15064.3. AEP believes this phrasing improves clarity and is more efficient.</p>
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