

ASSOCIATION OF  
ENVIRONMENTAL  
PROFESSIONALS

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October 12, 2015

Christopher Calfee, Senior Counsel  
Holly Roberson, Land Use Counsel  
Governor's Office of Planning and Research  
1400 Tenth Street  
Sacramento, California 95814  
[CEQA.Guidelines@resources.ca.gov](mailto:CEQA.Guidelines@resources.ca.gov)

**VIA E-MAIL**

Re: AEP Comments on OPR's August 11, 2015 *Proposed Updates to the CEQA Guidelines*

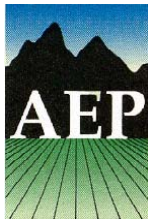
Dear Mr. Calfee and Ms. Roberson:

On behalf of the Association of Environmental Professionals (AEP), I appreciate the opportunity to provide comments on the California Office of Planning and Research's (OPR) August 11, 2015 *Proposed Updates to the CEQA Guidelines* (the "Proposed Amendments"). AEP recognizes the tremendous effort required drafting the Proposed Amendments, and we commend OPR for its 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.

AEP's specific comments on the Proposed Amendments 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. With specific respect to OPR's suggested revisions regarding renewable energy (*e.g.*, Appendix G, § V; § 15126.2 ), AEP recognizes the importance of renewable energy to California's future and anticipates working with OPR in order to capture the spirit of OPR's suggested energy revisions within a consistent, objective, and manageable CEQA framework.



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Should you have any questions or need additional information regarding our comments, please do not hesitate to contact me or our Capital lobbyist, Will Gonzalez at (916) 930 – 0796 or [will@gqhlobby.com](mailto:will@gqhlobby.com).

Sincerely,

*Devon Muto*

Devon Muto  
Executive Vice-President  
Chair, AEP Legislative Committee  
Association of Environmental Professionals  
(858) 442 – 4957  
[devon.muto@icfi.com](mailto:devon.muto@icfi.com)

cc: Will Gonzalez ([will@gqhlobby.com](mailto:will@gqhlobby.com))  
Matt Klopfenstein ([matt@gqhlobby.com](mailto:matt@gqhlobby.com))

#### **AEP State Officers**

Gene Talmadge, President ([jngtalmadge@msn.com](mailto:jngtalmadge@msn.com))  
Christina Ryan, Admin. Vice President ([christy.ryan@ascentenvironmental.com](mailto:christy.ryan@ascentenvironmental.com))  
Lynne Calvert-Hayes, AICP, Financial Vice President ([lynn.hayes@lsa-assoc.com](mailto:lynn.hayes@lsa-assoc.com))

#### **AEP Legislative Committee**

Patrick Angell ([pangell@pmcworld.com](mailto:pangell@pmcworld.com))  
Fernando Avila  
([Fernando.Avila@bbklaw.com](mailto:Fernando.Avila@bbklaw.com))  
Nisha Chauhan ([nishac77@gmail.com](mailto:nishac77@gmail.com))  
Mike Coleman ([MColeman@valleywater.org](mailto:MColeman@valleywater.org))  
Emily Creel ([ECreel@swca.com](mailto:ECreel@swca.com))  
Betty J. Dehoney  
([Betty.Dehoney@hdrinc.com](mailto:Betty.Dehoney@hdrinc.com))  
George Finney ([gfinney02@comcast.net](mailto:gfinney02@comcast.net))  
Ian Michael Forrest ([ian.forrest@sce.com](mailto:ian.forrest@sce.com))  
Jennifer Guenther ([jguenther@brandman.com](mailto:jguenther@brandman.com))  
William (Bill) Halligan  
([whalligan@planningcenter.com](mailto:whalligan@planningcenter.com))

Linda Hunter ([lhunter@huntersquared.com](mailto:lhunter@huntersquared.com))  
Jennifer Lynch ([Jennifer.Lynch@bbklaw.com](mailto:Jennifer.Lynch@bbklaw.com))  
Amanda Monchamp  
([amanda.monchamp@hklaw.com](mailto:amanda.monchamp@hklaw.com))  
Kellie Morgantini ([tula@nonnie.net](mailto:tula@nonnie.net))  
Nicole Morse ([nmorse@planningcenter.com](mailto:nmorse@planningcenter.com))  
Steve Noack ([snoack@placeworks.com](mailto:snoack@placeworks.com))  
Sarah Owsowitz  
([Sarah.Owsowitz@bbklaw.com](mailto:Sarah.Owsowitz@bbklaw.com))  
Antero Rivasplata  
([Antero.Rivasplata@icfi.com](mailto:Antero.Rivasplata@icfi.com))  
Steve Rodriguez ([rodriguezaiacp@aol.com](mailto:rodriguezaiacp@aol.com))

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AEP comments regarding the California Office of Planning & Research’s (“OPR”) *Proposed Updates to the CEQA Guidelines, Preliminary Discussion Draft* (August 11, 2015) (“Aug. 11 Discussion Draft”)

Using Regulatory Standards in CEQA CEQA Guidelines Section 15064 <sup>1</sup>	Suggested change	Rationale
<p>§ 15064. Determining the Significance of the Environmental Effects Caused by a Project...</p> <p>(b) <b>(1)</b> The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.</p> <p><b>(2) Thresholds of significance, as defined in Section 15064.7(a), may assist lead agencies in determining the significance of an impact. When relying on a threshold, the lead agency should explain how compliance with the threshold indicates that the project's impacts are less than significant. A lead agency shall not apply a threshold in a way that forecloses consideration of substantial evidence showing that, despite compliance with the threshold, there may still be a significant environmental effect from a project....</b></p>	<p>§ 15064. Determining the Significance of the Environmental Effects Caused by a Project...</p> <p>(b) <b>(1)</b> The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.</p> <p><del><b>(2) Thresholds of significance, as defined in Section 15064.7(a), may assist lead agencies in determining the significance of an impact. When relying on a threshold, the lead agency should explain how compliance with the threshold indicates that the project's impacts are less than significant. A lead agency shall not apply a threshold in a way that forecloses consideration of substantial evidence showing that, despite compliance with the threshold, there may still be a significant environmental effect from a project....</b></del></p> <p><b><u>avoid finding a potentially significant effect on the environment by rotely applying thresholds or standards of significance that do not address a given potential effect. Where there is substantial evidence in the record that an impact may be significant, an agency cannot avoid its obligation to consider such evidence through rote reliance on its threshold or standard.</u></b></p>	<p>AEP suggests the attached revisions to new section (b)(2) for the following reasons:</p> <ol style="list-style-type: none"> <li>1. With respect to the first two sentences in proposed subsection (b)(2), as noted in OPR’s explanatory text, demonstrating that compliance with a threshold indicates that a project’s impact is less than significant is already required by CEQA. Further, it is undisputed that where a lead agency’s choice of a significance threshold is supported by substantial evidence, the threshold stands. (<i>See, e.g.</i>, §§ 15064.4, 15064.7, 15128, and Appendix G.)</li> <li>2. AEP understands that the proposed language in the third sentence under (b)(2) is intended to memorialize the holding of <i>Protect the Historic Amador Waterways v. Amador Water Agency</i> (2004) 116 Cal. App. 4th 1099, 1108-1109 (“thresholds cannot be used to determine automatically whether a given effect will or will not be significant[;]” rather, “thresholds of significance can be used only as a measure of whether a certain environmental effect ‘will normally be determined to be significant’ or ‘normally will be determined to be less than significant’ by the agency”). However, AEP feels the more recent <i>Rominger v. County of Colusa</i> (2014) 229 Cal.App.4th 690 more completely captures <i>Amador’s</i> intent and provides a better model for the proposed CEQA Guidelines.</li> </ol> <p><i>Rominger</i> touches on the same issue as <i>Amador</i> (<i>i.e.</i>, blind reference to thresholds of significance without regard for contrary evidence of significant environmental impacts in the administrative record), and even cites to <i>Amador</i>. (<i>See Rominger</i>, 116 Cal.App.4th at p. 717-718 (“The Romingers contend that ‘even if a lead agency has discretion in setting thresholds of significance, if evidence is presented tending to show an actual environmental impact, despite the adopted significan[ce] standard, the agency cannot ignore the impact.’ In this regard, the Romingers are correct. (<i>See Protect the Historic Amador Waterways v. Amador Water Agency</i>, supra, 116 Cal.App.4th at pp. 1109–1111.) A lead agency cannot avoid finding a potentially significant effect on the environment by rotely applying standards of significance that do not address that potential effect. (<i>See id.</i> at p. 1111.) But the Romingers point to no evidence that that happened here. .... If the Romingers could point to substantial evidence in the record that the [project] at issue here might constitute a significant effect on the environment notwithstanding the county’s standard of significance, then it is true that the county could not avoid its obligation to prepare an EIR by rotely relying on its standard. But the Romingers fail to point to any such evidence. Instead, in the end, the Romingers’ argument rests solely on their misapplication of appendix G and the mistaken proposition that the conversion of any prime farmland to nonagricultural use may be considered a significant effect, no matter how much land is being converted or how much prime farmland remains unconverted.”))</p> <p>However, <i>Rominger</i> makes clear that there must be evidence before the lead agency to invoke the rule addressed by OPR’s proposed 15064(b)(2). AEP is concerned that <i>Amador’s</i> language could be interpreted to imply that a lead agency’s threshold of significance can be called into question absent substantial evidence in the administrative record of a significant impact (as was apparently argued by the Romingers). AEP’s proposed language makes clear that before a lead agency’s threshold of significance can be called into question, there must be substantial evidence in the administrative record that an impact may be significant, despite the project’s conformance with the applicable threshold of significance.</p>

<sup>1</sup> For ease of reference, only the text from sections with changes proposed in the Aug. 11 Discussion Draft or by the AEP is excerpted in this column.

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AEP comments regarding the California Office of Planning & Research's ("OPR") *Proposed Updates to the CEQA Guidelines, Preliminary Discussion Draft* (August 11, 2015) ("Aug. 11 Discussion Draft")

CEQA Guidelines Section 15064.7	Suggested change	Rationale
<p>§ 15064.7. Thresholds of Significance...</p> <p><b><u>(d) Any public agency may adopt or use an environmental standard as a threshold of significance. In adopting or using an environmental standard as a threshold of significance, a public agency shall explain how the particular requirements of that environmental standard will avoid or reduce project impacts, including cumulative impacts, to a less than significant level. For the purposes of this subdivision, an "environmental standard" is a rule of general application that is adopted by a public agency through a public review process and that is all of the following:</u></b></p> <p><b><u>(1) a quantitative, qualitative or performance requirement found in an ordinance, resolution, rule, regulation, order, or other environmental requirement of general application;</u></b></p> <p><b><u>(2) adopted for the purpose of environmental protection;</u></b></p> <p><b><u>(3) addresses the same environmental effect caused by the project; and,</u></b></p> <p><b><u>(4) is designed to apply to the type of project under review.</u></b></p>	<p>§ 15064.7. Thresholds of Significance...</p> <p><b><u>(d) Any public agency may adopt or use an environmental standard as a threshold of significance. In adopting or using an environmental standard as a threshold of significance, a public agency shall explain how the particular requirements of that environmental standard will avoid or reduce project impacts, including cumulative impacts, to a less than significant level.</u></b></p> <p><b><u><a href="#">Adoption of an environmental standard as a threshold of significance shall not require adherence to the public noticing and review requirements of § 15064.7.</a> For the purposes of this subdivision, an "environmental standard" is a rule of general application that is adopted by a public agency through a public review process and that is all of the following:</u></b></p> <p><b><u>(1) a quantitative, qualitative or performance requirement found in an ordinance, resolution, rule, regulation, order, or other environmental requirement of general application;</u></b></p> <p><b><u>(2) adopted for the purpose of environmental protection;</u></b></p> <p><b><u>(3) addresses the same environmental effect caused by the project; and,</u></b></p> <p><b><u>(4) is designed to apply to the type of project under review.</u></b></p>	<p>AEP suggests clarifying that agency adoption of an environmental standard can be adopted simply through a resolution or ordinance that complies with the Brown Act (California Gov't Code § 54950, <i>et seq.</i>) and <i>does not</i> require the formal public review and circulation process stated in § 15064.7.</p>

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<b>"Within the Scope" of a Program EIR</b>		
<b>CEQA Guidelines Section 15168</b>	<b>Suggested change</b>	<b>Rationale</b>
<p>§ 15168. Program EIR...</p> <p>...</p> <p>(2) If the agency finds that pursuant to Section 15162, no new <b>significant</b> effects could occur or no new mitigation measures 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 would be required. <b>Determining that a later activity is within the scope of a program covered in the program EIR is a factual question that the lead agency determines based on substantial evidence in the record. Relevant factors that an agency may consider 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 description of covered infrastructure, as presented in the project description or elsewhere in the program EIR.</b></p> <p>...</p>	<p>§ 15168. Program EIR...</p> <p>...</p> <p>(2) If the agency finds that pursuant to Section 15162, no new <b>significant</b> effects could occur or no new mitigation measures 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 would be required. <b>Determining that a later activity is within the scope of a program covered in the program EIR is a factual question that the lead agency determines based on substantial evidence in the record. <del>Relevant factors that an agency may consider 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 description of covered infrastructure, as presented in the project description or elsewhere in the program EIR.</del></b></p> <p>...</p>	<p>AEP supports OPR's intent to suggest relevant, non-exhaustive factors that may be considered when determining whether a later activity is within the scope of a program EIR. However, the AEP notes that the California Supreme Court currently has under review a case that is expected to provide guidance regarding the relevant factors and standard of review applicable to an agency's determination of whether changes to a large project for which a program EIR has been prepared either: (A) constitute a project modification, subject to subsequent CEQA review as limited by Public Resources Code § 21166 and Guidelines § 15162; or (B) a new project altogether, subject to essentially "de novo" review under the "fair argument" standard. (<i>See Friends of the College of San Mateo Gardens v. San Mateo Community College Dist.</i>, rev. gtd. 1/15/14, Case No. 5214061; <i>see also, e.g., Mani Bros. Real Estate Group v. City of Los Angeles</i> (2007) 153 Cal.App.4th 1385, 1391, 1400-1401.)</p> <p>Because the proposed amendment could conflict with forthcoming Supreme Court precedent, we suggest that OPR refrain from making revisions addressing this substantive area of law until the Supreme Court has rendered its decision. Once rendered, AEP recommends OPR revisit its suggested edits to Section 15168 and revise them as may be appropriate.</p> <p>(AEP notes that OPR decided to omit from its Discussion Draft issues related to GHG analysis and the "CEQA-in-reverse" issue precisely because those issues are currently pending in the Supreme Court. <i>See</i> Aug. 11 Discussion Draft, at 9 ("The California Supreme Court, however, is now considering those issues in several cases. OPR does not propose to address those topics while they are under consideration at the Supreme Court.").)</p>
<b>Clarifying Rules on Tiering</b>		
<b>CEQA Guidelines Section 15152</b>	<b>Suggested change</b>	<b>Rationale</b>
<p>§ 15152. Tiering...</p> <p>(h) <del>There are various types of EIRs that may be used in a tiering situation. The rules in this section govern tiering generally. Several other methods to streamline the environmental review process exist, which are governed by the more specific rules of those provisions. Where other methods have more specific provisions, those provisions shall apply, rather than the provisions in this section. These other methods include, but are not limited to, the following:</del></p> <p>...</p> <p><b>(8) Infill projects (Section 15183.3).</b></p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>

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Transit Oriented Development Exemption		
CEQA Guidelines Section 15182	Suggested change	Rationale
<p>§ 15182. <del>Residential</del> Projects Pursuant to a Specific Plan</p> <p>...</p> <p>(c) <del>Exemption-Residential Projects within Specific Plans.</del></p> <p><b>(1) Eligibility.</b> Where a public agency has prepared an EIR on a specific plan after January 1, 1980, <del>no EIR or negative declaration need be prepared for</del> a residential project undertaken pursuant to and in conformity to that specific plan <b>is exempt</b> if the project meets the requirements of this section.</p> <p>...</p>	<p>§ 15182. <del>Residential</del> Projects Pursuant to a Specific Plan</p> <p>...</p> <p>(c) <del>Exemption-Residential Projects within Specific Plans.</del></p> <p><b>(1) Eligibility.</b> Where a public agency has prepared an EIR on a specific plan after January 1, 1980, <del>no EIR or negative declaration need be prepared for</del> a residential project undertaken pursuant to and in conformity to that specific plan <b>is exempt from CEQA</b> if the project meets the requirements of this section.</p> <p>...</p>	<p>AEP suggests the noted edits to further clarify that under Govt. Code § 65457, qualifying projects are exempt from all CEQA requirements.</p>
Using the Existing Facilities Exemption		
CEQA Guidelines Section 15301	Suggested change	Rationale
<p>§ 15301. Existing Facilities...</p> <p>Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of <b>historic</b> use <del>beyond that existing at the time of the lead agency's determination.</del> The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use. Examples include but are not limited to: ...</p> <p>(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety, <b>and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, pedestrian crossings, and street trees, and other similar improvements that do not create additional automobile lanes).</b>"</p>	<p>§ 15301. Existing Facilities...</p> <p>Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of <b>existing or historic</b> use <del>beyond that existing at the time of the lead agency's determination.</del> The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use. Examples include but are not limited to: ...</p> <p>(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety, <b>and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, pedestrian crossings, and street trees, and other similar improvements that do not create additional automobile lanes).</b>"</p>	<p>AEP understands the proposed amendment replaces "no expansion of use" with "no expansion of <i>historic</i> use" in an effort to provide lead agencies with the opportunity to apply the exemption to currently vacant buildings. However, in doing so, the exemption now opens itself up to an argument that an existing productive use on a parcel that has historically been non-productive cannot benefit from the exemption. Unfortunately, the language proposed by OPR may give rise to a legal battle ground over what constitutes "historic use" in projects that, under the original language, would be clearly exempt.</p> <p>By allowing a lead agency to choose between using the existing use <b>or</b> the historic use as its baseline (supported by substantial evidence) the exemption would more closely comport with baseline case law and the proposed changes to Section 15125.</p>



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Updating the Environmental Checklist		
Proposed Amendments to Appendix G	Suggested change	Rationale
<p>I. AESTHETICS -- Would the project:</p> <p>a) Have a substantial adverse effect on <u>either</u> a scenic vista <u>or scenic resources within a designated scenic highway</u>?</p> <p>b) <del>Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?</del></p> <p>c) <del>Substantially degrade the existing</del> <u>Substantially degrade the existing</u> visual character or quality of <u>public views of</u> the site and its surroundings <u>in conflict with applicable zoning and other regulations?</u></p> <p>c) <del>d)</del> Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?</p>	<p>I. AESTHETICS -- Would the project:</p> <p>a) Have a substantial adverse effect on <del>either</del> a <u>designated</u> scenic vista, <del>designated or scenic resources,</del> <u>or within a designated scenic highway?</u></p> <p>b) <del>Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?</del></p> <p>c) <del>Substantially degrade the existing</del> <u>Substantially degrade the existing</u> visual character or quality of <u>public views of</u> the site and its surroundings <u>in conflict with applicable zoning and other regulations?</u></p> <p>c) <del>d)</del> Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?</p>	<p>AEP suggests these edits to clarify long-standing, ambiguous language which left open the question whether OPR was suggesting that lead agencies and consultants look at impacts to scenic vistas/resources <i>only</i> if they occur within a designated scenic highway, or just in general.</p>

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<p><del>II. AGRICULTURE AND FOREST RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. — Would the project:</del></p> <p><del>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</del></p> <p><del>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?</del></p> <p><del>c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?</del></p> <p><del>d) Result in the loss of forest land or conversion of forest land to non-forest use?</del></p> <p><del>e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?</del></p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>
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<p>III. AIR QUALITY -- <del>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.</del> Would the project:</p> <p>a) Conflict with or obstruct implementation of the applicable air quality plan <u>or exceed significance criteria established by the applicable air quality management or air pollution control district?</u></p> <p>b) Violate any air quality standard or <del>contribute substantially to result in a cumulatively considerable net increase in</del> an existing or projected air quality violation?</p> <p>c) <del>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)?</del></p> <p>d) Expose sensitive receptors to substantial pollutant concentrations?</p> <p>e) <del>Create objectionable</del> <u>Result in frequent and substantial emissions (such as odors, dust or haze) for a substantial duration that adversely affecting</u> a substantial number of people?</p>	<p>III. AIR QUALITY -- <del>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.</del> Would the project:</p> <p>a) Conflict with or obstruct implementation of the applicable air quality plan?</p> <p>b) <del>or e</del> <u>Exceed significance criteria established by the applicable air quality management or air pollution control district?</u></p> <p>c) <del>b</del> Violate any air quality standard or <del>contribute substantially to result in a cumulatively considerable net increase in</del> an existing or projected air quality violation?</p> <p>d) <del>e</del> <u>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></p> <p>d) Expose sensitive receptors to substantial pollutant concentrations?</p> <p>e) <del>Create objectionable</del> <u>Result in frequent and substantial emissions (such as odors, or dust or haze) for a substantial duration that adversely affecting</u> a substantial number of people?</p>	<p>AEP suggests the criteria under (a) be broken up in order to make clear that <i>either</i> conflict with an applicable air quality plan <i>or</i> exceedance of significance criteria constitute a potentially significant impact under CEQA.</p> <p>AEP further suggests the deletion of the term "haze" given the lack of criteria available to objectively evaluate this phenomenon or quantify in practice, as well as its potential to naturally occur.</p>
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<p>IV. BIOLOGICAL RESOURCES -- Would the project:</p> <p>a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</p> <p>b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?</p> <p>c) Have a substantial adverse effect on <b>state or</b> federally protected wetlands <del>as defined by Section 404 of the Clean Water Act</del> (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</p> <p>d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?</p> <p>e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?</p> <p>f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?</p>	<p>IV. BIOLOGICAL RESOURCES -- Would the project:</p> <p>a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</p> <p>b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?</p> <p>c) Have a substantial adverse effect on <b>state or</b> federally protected wetlands <del>as defined by Section 404 of the Clean Water Act</del> (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</p> <p>d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?</p> <p>e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?</p> <p>f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?</p> <p><a href="#">g) Have a substantial adverse impact open space important for the preservation of natural resources, such as habitat required for the preservation of wildlife species, including habitat corridors?</a></p> <p><a href="#">h) Have a substantial adverse impact waters of the state important for the preservation of fish and wildlife species?</a></p> <p><a href="#">i) Convert substantial amounts of forest land to non-forest use?</a></p> <p><a href="#">j) Change substantial amounts of existing zoning or plan designations for forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g)), to non-forest land uses?</a></p> <p><a href="#">k) Have a substantial adverse impact on oak woodland habitat?</a></p>	<p>AEP suggests relocating an consolidating questions (g) through (k) from the proposed section XI, <i>Open Space, Managed Resources, and Working Landscapes</i> to this section given that these questions all seemingly relate to biological resources that may be impacted by a specific project and are likely best described by a biological resources specialist.</p>
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<p>V. CULTURAL RESOURCES -- Would the project:</p> <p>a) Cause a substantial adverse change in the significance of a historical resource <u>or of a unique archeological resource pursuant to as defined in § 15064.5?</u></p> <p>b) <del>Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?</del></p> <p>c) <u>Cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code Section 21074? <del>Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?</del></u></p> <p>d) <del>c) Disturb any human remains, including those interred outside of formal cemeteries?</del></p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>
<p>VI. <del>GEOLGY AND SOILS</del> -- <del>Would the project:</del></p> <p>a) <del>Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:</del></p> <p>i) <del>Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.</del></p> <p>ii) <del>Strong seismic ground shaking?</del></p> <p>iii) <del>Seismic related ground failure, including liquefaction?</del></p> <p>iv) <del>Landslides?</del></p> <p>b) <del>Result in substantial soil erosion or the loss of topsoil?</del></p> <p>c) <del>Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?</del></p> <p>d) <del>Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?</del></p> <p>e) <del>Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?</del></p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>

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<p><b><u>V. ENERGY – Would the project:</u></b> <b><u>a) Result in wasteful, inefficient, or unnecessary consumption of energy, during project construction or operation?</u></b> <b><u>b) Incorporate renewable energy or energy efficiency measures into building design, equipment use, transportation or other project features?</u></b></p>	<p><del><b><u>V. ENERGY – Would the project:</u></b></del> <del><b><u>a) Result in wasteful, inefficient, or unnecessary consumption of energy, during project construction or operation?</u></b></del> <del><b><u>b) Incorporate renewable energy or energy efficiency measures into building design, equipment use, transportation or other project features?</u></b></del></p>	<p>AEP agrees that energy conservation is an important public policy goal and notes that California has been a demonstrated leader with respect to green building codes and design. However, consistent with its comments with respect to CEQA Guidelines Section 15126.2 and Appendix F below, AEP believes the addition of specific criteria attempting to document the “wasteful, inefficient, or unnecessary” consumption of energy is misplaced within CEQA.</p> <p>First, as a practical matter, whether a project results in the “wasteful, inefficient, or unnecessary consumption of energy” is wholly subjective. AEP questions whether this “impact” can be objectively documented, measured, and then mitigated (one of the primary goals of CEQA).</p> <p>Second, AEP notes that this effort is not necessary given the environmental byproducts of any wasteful and/or inefficient consumption of energy are already documented under CEQA. For example, the project’s emissions of greenhouse gases and other criteria air pollutants, excess generations of vehicle miles travelled, and/or potential interference with adopted plans to address renewable portfolio standards (and greenhouse gas emissions), <i>etc.</i> must already be described, documented and mitigated to the extent feasible.</p> <p>Third, with respect to V(b), AEP notes that the incorporation of “renewable energy or efficiency measures” is <i>not</i> an environmental impact. Rather, V(b) is written like a compulsory mitigation measure, seemingly applicable regardless of the significance of attendant environmental impacts resulting from the project.</p> <p>AEP recommends not adding the proposed energy section to Appendix G. However, recognizing California’s asserted policy preference to encourage energy efficiency and increase the renewable energy consumption, AEP anticipates working with OPR in order to capture the spirit of OPR’s suggested energy revisions within a consistent, objective, and manageable CEQA framework.</p>
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<p>VIII. HAZARDS AND HAZARDOUS MATERIALS - Would the project:</p> <p>a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?</p> <p>b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?</p> <p>c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?</p> <p>d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?</p> <p>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, <u>or within the vicinity of a private airstrip</u>, would the project result in a safety hazard <u>or excessive noise</u> for people residing or working in the project area?</p> <p><del>f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?</del></p> <p>g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?</p> <p>h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, <u>flooding or other inundation, unstable soils and other potential hazards including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?</u></p>	<p>VIII. HAZARDS AND HAZARDOUS MATERIALS - Would the project:</p> <p>a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?</p> <p>b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?</p> <p>c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?</p> <p>d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?</p> <p>e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, <u>or within the vicinity of a private airstrip</u>, would the project result in a safety hazard <del>or excessive noise</del> for people residing or working in the project area?</p> <p><del>f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?</del></p> <p>g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?</p> <p>h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, <u>flooding or other inundation, unstable soils and other potential hazards including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?</u></p>	<p>AEP suggests the deletion of the reference to "excessive noise" as duplicative of the suggested noise analyses in Appendix G, Section XII.</p>
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<p>IX. HYDROLOGY AND WATER QUALITY -- Would the project:</p> <p>a) Violate any water quality standards or waste discharge requirements <b><u>or otherwise substantially degrade surface or ground water quality?</u></b></p> <p>b) Substantially <del>deplete</del> <b>decrease</b> groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level <del>(e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?</del></p> <p>c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river <b><u>or through the addition of impervious surfaces,</u></b> in a manner which would:</p> <p><b><u>(i) result in substantial erosion or siltation on- or off-site;</u></b></p> <p><b><u>(ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;</u></b></p> <p><b><u>(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or</u></b></p> <p><b><u>(iv) impede or redirect flood flows?</u></b></p> <p><del>d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?</del></p> <p><del>e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?</del></p> <p><del>f) Otherwise substantially degrade water quality?</del></p> <p><del>g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?</del></p> <p><del>h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?</del></p> <p><del>i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?</del></p> <p><del>j) Inundation by seiche, tsunami, or mudflow?</del></p>	<p>IX. HYDROLOGY AND WATER QUALITY -- Would the project:</p> <p>a) Violate any water quality standards or waste discharge requirements <b><u>or otherwise substantially degrade surface or ground water quality?</u></b></p> <p>b) Substantially <del>deplete</del> <b>decrease</b> groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level <b><u>(e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?</u></b></p> <p>c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river <b><u>or through the addition of impervious surfaces,</u></b> in a manner which would:</p> <p><b><u>(i) result in substantial erosion or siltation on- or off-site;</u></b></p> <p><b><u>(ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;</u></b></p> <p><b><u>(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or</u></b></p> <p><b><u>(iv) impede or redirect flood flows?</u></b></p> <p><del>d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?</del></p> <p><del>e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?</del></p> <p><del>f) Otherwise substantially degrade water quality?</del></p> <p><del>g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?</del></p> <p><del>h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?</del></p> <p><del>i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?</del></p> <p><del>j) Inundation by seiche, tsunami, or mudflow?</del></p>	<p>AEP suggests reinstating the example regarding groundwater supplies as it is helpful in assisting lead agencies develop and apply a threshold for a "substantial" decrease in groundwater supplies.</p>
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<p><del>IX.</del> LAND USE AND PLANNING - Would the project:</p> <p>a) Physically divide an established community?</p> <p>b) <del>Conflict</del> Cause a significant environmental impact due to a conflict with any <del>applicable</del> land use plan, policy, or regulation <del>of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance)</del> adopted for the purpose of avoiding or mitigating an environmental effect?</p> <p>c) <del>Conflict with any applicable habitat conservation plan or natural community conservation plan?</del></p>	<p><del>IX.</del> LAND USE AND PLANNING - Would the project:</p> <p>a) Physically divide an established community?</p> <p>b) <del>Conflict</del> Cause a significant environmental impact due to a conflict with any <u>applicable</u> land use plan, policy, or regulation <del>of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance)</del> adopted for the purpose of avoiding or mitigating an environmental effect?</p> <p>c) <del>Conflict with any applicable habitat conservation plan or natural community conservation plan?</del></p>	<p>AEP suggests reinstating the word "applicable" in reference to land use plans, policies, and/or regulations to limit confusion regarding potential misinterpretations of jurisdictional authority. AEP notes that the jurisdiction of certain California State agencies might preempt local land use plans and policies (e.g., certain energy infrastructure projects before the California Public Utilities Commission) and thus not all local land use plans, policies, or regulations are "applicable" to a given project.</p>
<p><del>XI.</del> MINERAL RESOURCES -- Would the project:</p> <p>a) <del>Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?</del></p> <p>b) <del>Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?</del></p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>
<p><del>XII.</del> NOISE -- Would the project result in:</p> <p>a) Exposure of persons to or generation of <del>a substantial temporary or permanent increase in ambient</del> noise levels <del>in the vicinity of the project</del> in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?</p> <p>b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?</p> <p>c) <del>A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?</del></p> <p>d) <del>A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?</del></p> <p>e) <del>For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?</del></p> <p>f) <del>For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?</del></p>	<p><u>XII.</u> NOISE -- Would the project result in:</p> <p>a) Exposure of persons to or generation of <u>a substantial temporary or permanent increase in ambient</u> noise levels <u>in the vicinity of the project</u> in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?</p> <p>b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?</p> <p>c) <u>A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?</u></p> <p>d) <u>A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?</u></p> <p>e) <u>For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?</u></p> <p>f) <u>For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?</u></p>	<p>AEP supports this edit as proposed by OPR.</p> <p>Note, please confirm the roman numbering of this section and see AEP's suggested edit.</p>



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<p><b>XI. OPEN SPACE, MANAGED RESOURCES AND WORKING LANDSCAPES – Would the project adversely affect open spaces containing natural resources and working landscapes? Considerations may include, among others, whether the project would:</b></p> <p><b>a) Adversely impact open space for the preservation of natural resources, including, but not limited to: (i) habitat required for the preservation of fish and wildlife species, including habitat corridors; (ii) waters of the state; or (iii) unique paleontological resource or site or unique geologic feature?</b></p> <p><b>b) Adversely impact open space used for production of resources by, among other things:</b></p> <p><b>(i) converting farmland to non-agricultural use;</b>  <b>(ii) changing existing zoning or plan designations for agricultural uses to non-agricultural use;</b>  <b>(iii) conflicting with a Williamson Act contract;</b>  <b>(iv) converting forest land to non-forest use;</b>  <b>(v) changing existing zoning or plan designations for forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g)), to non-forest land uses;</b>  <b>(vi) converting oak woodlands;</b>  <b>(vii) substantially impeding groundwater recharge;</b>  <b>(viii) causing substantial soil erosion or the loss of topsoil; or</b>  <b>(ix) causing the loss of availability of a known mineral resource.</b></p> <p><b>c) Adversely affect open spaces used for outdoor recreation, including parks, trails and similar resources through conversion to non-recreation uses or by increasing demand to a degree that substantial physical deterioration would occur?</b></p> <p><b>d) Place new structures in or otherwise adversely affect areas requiring special management due to hazards, including, but not limited to:</b></p> <p><b>(i) areas subject to periodic inundation, including coasts, wetlands, and riparian areas and flood zones;</b>  <b>(ii) wildfire hazard areas;</b>  <b>(iii) unstable soil areas, including fault zones, liquefaction zones, areas subject to landslides and expansive soil areas; or</b>  <b>(iv) areas required for the protection of water quality and water supply?</b></p>	<p><del>XI. OPEN SPACE, MANAGED RESOURCES AND WORKING LANDSCAPES – Would the project adversely affect open spaces containing natural resources and working landscapes? Considerations may include, among others, whether the project would: a) Adversely impact open space for the preservation of natural resources, including, but not limited to: (i) habitat required for the preservation of fish and wildlife species, including habitat corridors;</del></p> <p><del>XII. PALEONTOLOGICAL RESOURCES - Would the project cause the loss of a (iii) unique paleontological resource or site?</del></p> <p><del>XIII. GEOLOGICAL RESOURCES - Would the project cause the loss of a unique geologic feature?</del></p> <p><del>XIV. AGRICULTURAL RESOURCES – Would the project: b) Adversely impact open space used for production of resources by, among other things: a) (i) Converting substantial amounts of farmland to non-agricultural use; b) (ii) Changing substantial amounts of existing zoning or plan designations for agricultural uses to non-agricultural use; c) (iii) Conflicting with a Williamson Act contract; or (iv) converting forest land to non-forest use; (v) changing existing zoning or plan designations for forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g)), to non-forest land uses; (vi) converting oak woodlands; (vii) substantially impeding groundwater recharge; d) (viii) Causeing substantial soil erosion or the loss of topsoil; or</del></p> <p><del>XV. MINERAL RESOURCES - (ix) Would the project causeing the loss of availability of a known mineral resource.?</del></p> <p><del>XVI. RECREATION – Would the project :c) Have a substantial, adverse impact on ly affect open spaces used for outdoor recreation, including parks, trails and similar resources through conversion to non-recreation uses or by increasing demand to a degree that substantial physical deterioration would occur? d) Place new structures in or otherwise adversely affect areas requiring special management due to hazards, including, but not limited to: (i) areas subject to periodic inundation, including coasts, wetlands, and riparian areas and flood zones; (ii) wildfire hazard areas; (iii) unstable soil areas, including fault zones, liquefaction zones, areas subject to landslides and expansive soil areas; or (iv) areas required for the protection of water quality and water supply?</del></p>	<p>AEP suggests the following edits:</p> <ol style="list-style-type: none"> <li>For this and the following sections, please confirm the roman numbering and see AEP's suggested edit.</li> <li>Please delete reference to proposed section XII(b)(vii) as duplicative of the analyses suggested in Water Quality section IX(b).</li> <li>Please delete proposed section XII(d) pending additional guidance from the California Supreme Court with respect to whether CEQA operates "in reverse" (i.e., requires analysis of the existing environment's impacts on the proposed project, see <i>CBIA v. BAAQMD</i>, Supreme Court Case No. S213478).</li> <li>AEP suggests relocating the topics regarding open space important for the preservation and conservation of flora and fauna to the biological resources (see AEP proposed edits to Appx G, Section IV above).</li> <li>While AEP appreciates OPR's intent at streamlining the environmental review, AEP believes that OPR's proposal to capture various disparate sections under one "Open Space, Managed Resources, and Working Landscapes" section will engender confusion, create unwieldy CEQA documents, and may inadvertently result in increased litigation.             <p>AEP believes that in practice, this section will become very complicated to investigate and develop. As proposed, it would require numerous authors across a variety of technical disciplines creating challenges for this section's ability to speak with one voice. This section will likely become unwieldy and may lack focus and clarity due to the breadth of the subjects it is expected to address.</p> <p>CEQA practitioners will need to be very cautious with respect to the mitigation measures proposed to address significant impacts to the disparate environmental categories proposed to be captured herein. For example, mitigation measures to address soil erosion and/or the loss of topsoil will presumably be markedly different and will need to be clearly distinguished from mitigation measures to address impacts to outdoor recreation. However, by combining these two concepts into the same section, they become awkwardly joined at the hip from the development of the Initial Study. This likely will lead to the unnecessary consideration of clearly insignificant issues. It would be preferable to separately consider these potential impacts to each environmental subject area so that each impact appropriately receives the level of attention it warrants.</p> <p>Further, AEP believes this section as proposed may result in additional CEQA litigation. For example, some of the progress suggested by OPR with respect to CEQA Guidelines section 15234 (Remand) may be undone in that a mistake with respect to one isolated and unique subject area may result in a court's rejection and remand of this entire section. For its breadth, this section may become a favorite of CEQA challengers as it may be difficult to easily dismiss particular sub-issues captured by this section.</p> <p>AEP suggests, among the other edits described above, re-breaking the proposed "Open Space, Managed Resources, and Working Landscapes" section into its various component parts:</p> <ul style="list-style-type: none"> <li>Paleontological Resources;</li> <li>Geological Resources;</li> <li>Agricultural Resources;</li> <li>Mineral Resources; and</li> <li>Recreation.</li> </ul> </li> </ol>
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<p>XIII. POPULATION AND HOUSING -- Would the project:</p> <p>a) Induce substantial <b>unplanned</b> population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?</p> <p>b) Displace substantial numbers of existing <b>people or</b> housing, necessitating the construction of replacement housing elsewhere?</p> <p>c) <b>Result in a substantial imbalance in regional jobs / housing fit?</b>  <del>Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?</del></p>	<p>XIII. POPULATION AND HOUSING -- Would the project:</p> <p>a) Induce substantial <b>unplanned</b> population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?</p> <p>b) Displace substantial numbers of existing <b>people or</b> housing, necessitating the construction of replacement housing elsewhere?</p> <p>c) <del>Result in a substantial imbalance in regional jobs / housing fit?</del>  <del>Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?</del> <u>Displace substantial numbers of existing people, housing, or employment, resulting in an increase of vehicles miles travelled?</u></p>	<p>AEP generally supports the intent to clarify this section of the checklist, but has concerns regarding the reference to a "substantial imbalance in regional jobs / housing fit." Specifically, these terms are not commonplace or otherwise defined within CEQA and/or by CEQA case law.</p> <p>Further, AEP notes that in and of itself, a "substantial imbalance" between regional jobs and housing is not an environmental impact. Rather, it is the responses to that imbalance that cause the environmental impacts at the heart of CEQA's inquiries.</p> <p>As suggested herein, AEP recommends that this checklist question be reframed to address environmental impacts (specifically vehicle miles travelled) caused by a project's potential impacts on population, housing, and employment.</p>
<p><del>XIVXV. RECREATION—</del></p> <p><del>a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?</del></p> <p><del>b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?</del></p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>

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<p>XVI. TRANSPORTATION/<del>TRAFFIC</del> -- Would the project:</p> <p>a) Conflict with an <del>applicable</del> plan, ordinance or <del>policy establishing measures of effectiveness for the addressing the safety or performance of the circulation system, including transit, roadways, bicycle lanes and pedestrian paths?</del> , <del>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?</del></p> <p>b) <del>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? Cause substantial additional vehicle miles traveled (per capita, per service population, or other appropriate measure)?</del></p> <p>c) <del>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? Substantially induce additional automobile travel by increasing physical roadway capacity in congested areas (i.e., by adding new mixed-flow lanes) or by adding new roadways to the network? increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?</del></p> <p>d) Result in inadequate emergency access?</p> <p>f) <del>Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?</del></p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>
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<p>XVII. UTILITIES AND SERVICE SYSTEMS -- Would the project:</p> <p>a) <del>Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?</del></p> <p>b) Require or result in the construction of new <u>or expanded</u> water, <del>or</del> wastewater treatment <u>or storm water drainage</u> facilities <del>or expansion of existing facilities</del>, the construction of which could cause significant environmental effects?</p> <p>c) <del>Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</del></p> <p>d) Have sufficient water supplies available to serve the project <u>and reasonably foreseeable future development during normal, dry and multiple dry years from existing entitlements and resources, or are new or expanded entitlements needed?</u></p> <p>e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?</p> <p>f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?</p> <p>g) Comply with federal, state, and local statutes and regulations related to solid waste?</p>	<p>XVII. UTILITIES AND SERVICE SYSTEMS -- Would the project:</p> <p>a) <del>Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?</del></p> <p>b) Require or result in the <u>relocation of existing and/or</u> construction of new <u>or expanded</u> water, <del>or</del> wastewater treatment, <del>or</del> <u>storm water drainage, electric power, natural gas, and/or telecommunications</u> facilities <del>or expansion of existing facilities</del>, the construction <u>and/or relocation</u> of which could cause significant environmental effects?</p> <p>c) <del>Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?</del></p> <p>d) <del>b)</del> Have sufficient water supplies available to serve the project <u>and reasonably foreseeable future development during normal, dry and multiple dry years from existing entitlements and resources, or are new or expanded entitlements needed?</u></p> <p>e) <del>c)</del> Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?</p> <p>f) <del>d)</del> <del>Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?</del> <u>Generate solid waste in excess of State or local standards or in excess of the capacity of local infrastructure?</u></p> <p>e) <u>Negatively impact the provision of solid waste services or impair the attainment of solid waste reduction goals?</u></p> <p>g) <del>f)</del> Comply with federal, state, and local <u>management and reduction</u> statutes and regulations related to solid waste?</p>	<p>AEP suggests deleting section (d) as it implies that a water supply assessment is appropriate for <i>all</i> projects triggering CEQA, no matter how small. This appears to be a step beyond the authority of the Water Supply Verification Statutes (SB 610, <i>Water Supply Assessments</i> and SB 221, <i>Written Verifications of Water Supply</i>).</p> <p>AEP also suggests edits to capture a project's potential need for the relocation of existing and/or development of new electrical, natural gas, and telecommunications infrastructure, consistent with the existing inquiry regarding water, wastewater, and drainage facilities. AEP believes this is consistent with CEQA's existing mandate that the lead agency consider the whole of an action, not simply its constituent parts (<i>see</i> CEQA Guidelines §§ 15003(h), 15378 ("project" being defined as the "whole of an action")), as well as encouraging efficiencies by the tiering from and reference to previous environmental analyses where possible (<i>see</i> Cal. Pub. Res. Code §§ 21068.5 (defining "tiering"), 21093 (encouraging exclusion of duplicative environmental analysis), 21156 (generally encouraging streamlining of the environmental review); CEQA Guidelines §§ 15152 (encouraging "tiering" as a means to eliminate repetitive discussions of environmental issues)).</p> <p>Further, AEP suggests changes be made with respect to solid waste generation and management. State law enacted by AB 939 in 1989 required that local governments reduce waste within their borders by 50% by the year 2000. With AB 341 and AB 32, the State legislature has increased the waste diversion goal to 75% and required commercial recycling. In 2014 the State legislature enacted AB 1826, which requires organic waste diversion. There is currently insufficient infrastructure in the State to accommodate all of the waste diversion that is mandated by these laws. Given that the majority of waste local governments manage is <i>not</i> destined for a landfill, AEP suggests these changes to bring this waste generation and management language up to date.</p> <p>Lastly, AEP requests that OPR check the roman numerals associated with this section (and all those succeeding it). AEP suspects it should be renumbered as indicated.</p>
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<p><b>XVIII. WILDFIRE -- If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:</b>  <b>a) Impair an adopted emergency response plan or emergency evacuation plan?</b>  <b>b) Due to slope, prevailing winds, and other factors, expose project occupants to, or exacerbate risks from, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?</b>  <b>c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?</b>  <b>d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?</b></p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>
<p>XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --  a) Does the project have the potential to <b>substantially</b> 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, <b>substantially</b> reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?  b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?  c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?</p>	<p>XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --  a) Does the project have the potential to <b>substantially</b> 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, <b>substantially</b> reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?  b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?  c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?  <b>d) Does the project have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals?</b></p>	<p>AEP suggests an additional question to this section in order to improve consistency with existing CEQA Guidelines Section 15065(a)(2) ("A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur: ... (2) The project <i>has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.</i>" (emphasis added)).</p>



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Remedies and Remand		
CEQA Guidelines Section 15234	Suggested change	Rationale
<p><b>15234. Remand</b>  <u>(a) Not every violation of CEQA is prejudicial requiring rescission of project approvals. Courts may fashion equitable remedies in CEQA litigation. If a court determines that a public agency has not complied with CEQA, and that noncompliance was a prejudicial abuse of discretion, the court shall issue a peremptory writ of mandate requiring the agency to:</u>  <u>(1) void the project approval, in whole or in part;</u>  <u>(2) suspend any project activities that preclude consideration and implementation of mitigation measures and alternatives necessary to comply with CEQA; or</u>  <u>(3) take specific action necessary to bring the agency's consideration of the project into compliance with CEQA.</u>  <u>(b) Following a determination described in subdivision (a), an agency may proceed with those portions of the challenged determinations, findings, or decisions for the project or those project activities that the court finds:</u>  <u>(1) are severable;</u>  <u>(2) will not prejudice the agency's compliance with CEQA as described in the court's peremptory writ of mandate; and</u>  <u>(3) complied with CEQA.</u>  <u>(c) An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion to leave project approvals in place or in practical effect during that period because the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period.</u>  <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. In general, where a court has required an agency to void its approval of the project, the agency need not expand the scope of analysis on remand beyond that specified by the court, except under the circumstances described in section 15088.5. In general, where a court has not required an agency to void its approval of the project, the agency need not expand the scope of analysis on remand beyond that specified by the court, except under the circumstances described in Section 15162.</u></p>	<p><b>15234. Remand</b>  <u>(a) Not every violation of CEQA is prejudicial requiring rescission of project approvals. Courts may fashion equitable remedies in CEQA litigation. If a court determines that a public agency has not complied with CEQA, and that noncompliance was a prejudicial abuse of discretion, the court shall issue a peremptory writ of mandate requiring the agency to:</u>  <u>(1) void the project approval, in whole or in part;</u>  <u>(2) suspend any project activities that preclude consideration and implementation of mitigation measures and alternatives necessary to comply with CEQA; or</u>  <u>(3) take specific action necessary to bring the agency's consideration of the project into compliance with CEQA.</u>  <u>(b) Following a determination described in subdivision (a), an agency may proceed with those portions of the challenged determinations, findings, or decisions for the project or those project activities that the court finds:</u>  <u>(1) are severable;</u>  <u>(2) will not prejudice the agency's compliance with CEQA as described in the court's peremptory writ of mandate; and</u>  <u>(3) complied with CEQA.</u>  <u>(c) An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion to leave project approvals in place or in practical effect during that period because the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period.</u>  <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. In general, where a court has required an agency to void its approval of the project, the agency need not, <del>expand the scope of analysis</del> on remand, <del>reanalyze project impacts to resources areas</del> beyond <del>that</del> <u>what is necessary to respond to the court's decision specified by the court</u>, except under the circumstances described in section 15088.5. In general, where a court has not required an agency to void its approval of the project, the agency need not, <del>expand the scope of analysis on remand, reanalyze project impacts to resources areas</del> beyond <del>that</del> <u>what is necessary to respond to the court's decision specified by the court</u>, except under the circumstances described in Section 15162.</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, in order to meet OPR's goal of helping the public and project proponents understand the effect of a court remand on project implementation, AEP suggests revising the language in subparagraph (d) (advising that the lead agency "expand the scope of analysis" on remand) in order to clearly indicate that this means it is acceptable under CEQA to re-do portions of the EIR and/or re-analyze impacts on resource areas only to the extent necessary to respond to the court's decision. 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>

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Analysis of Energy Impacts		
CEQA Guidelines Section 15126.2	Suggested change	Rationale
<p>§ 15126.2. Consideration and Discussion of Significant Environmental Impacts ...</p> <p><b>(b) Energy Impacts. The EIR shall include an analysis of whether the project will result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption of energy. 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 project design, 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. (Guidance on information that may be included in such an analysis is presented in Appendix F.) This analysis is subject to the rule of reason and shall focus on energy demand that is caused by the project.</b></p>	<p>§ 15126.2. Consideration and Discussion of Significant Environmental Impacts ...</p> <p><del>(b) Energy Impacts. The EIR shall include an analysis of whether the project will result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption of energy. 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 project design, 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. (Guidance on information that may be included in such an analysis is presented in Appendix F.) This analysis is subject to the rule of reason and shall focus on energy demand that is caused by the project.</del></p>	<p>As explained above in AEP's comments regarding the proposed Energy Impacts section in Appendix G, while AEP agrees that energy conservation is an important public policy goal, AEP believes the addition of specific criteria attempting to document the "wasteful, inefficient, or unnecessary" consumption of energy is misplaced within CEQA. AEP recommends leaving CEQA Guidelines Section 15126.2 unchanged and making no change regarding energy.</p> <p>First, as a practical matter, whether a project results in the "wasteful, inefficient, or unnecessary consumption of energy" is wholly subjective. AEP questions whether this "impact" can be objectively documented, measured, and then mitigated (one of the primary goals of CEQA). For example, AEP assumes that a full lifecycle accounting analysis for energy used in the construction of a project would (generally) not be required. The application of the "rule of reason" in this context however is vague, and AEP foresees difficulties in its implementation.</p> <p>Relatedly, even if the issues of adequate thresholds of significance and quantification are overcome, it is unclear that this section would ever yield any helpful analysis. CEQA applies to projects resulting in either direct or indirect physical changes in the environment that are subject to discretionary approval by California public agencies. For purposes of determining whether a project may have a significant effect on the environment, existing conditions are normally used as the baseline for analysis. A project's impact is significant when it would result in a substantial adverse change from existing conditions. In most cases, because of the improvements in California's energy efficiency standards, new development is more energy efficient than existing development. Such a proposed project would not likely be wasteful or inefficient in comparison to the baseline.</p> <p>Second, AEP notes that this effort is not necessary given the environmental byproducts of any wasteful and/or inefficient consumption of energy are already documented under CEQA. For example, the project's emissions of greenhouse gases and other criteria air pollutants, excess generations of vehicle miles travelled, and/or potential interference with adopted plans to address renewable portfolio standards (and greenhouse gas emissions), etc. must already be described, documented and mitigated to the extent feasible.</p> <p>Third, prior to 1974's adoption of Appendix F, California's Building Code and Green Building Standards (Title 24, Part 11, California Code of Regulations) contained practically no provisions for energy efficiency, nor did other codes and standards mandate energy efficiency. Today's situation is markedly different - energy efficiency is an integral part of California's building codes, vehicle fuel efficiency standards, renewable energy standards (including the Renewable Portfolio Standard), and water conservation requirements. (See California Energy Commission's 2013 Building Energy Efficiency Standards; AB 1493 (Pavley – 2002 (requiring ARB's adoption of standards to lower GHG emissions)); SB X7-7 (Water Conservation Act of 2009)). As a result of its broad approach to energy conservation and encouragement of renewable energy use, California one of the lowest per capita energy consumptions of all the 50 states. (See U.S. Energy Information Administration, California webpage at <a href="http://www.eia.gov/state/print.cfm?sid=CA">http://www.eia.gov/state/print.cfm?sid=CA</a> (last checked Oct. 8, 2015) (California ranks 48/50 in terms of U.S. per capita energy consumption)).</p> <p>However, recognizing California's asserted policy preference to encourage energy efficiency and increase the renewable energy consumption, AEP anticipates working with OPR in order to capture the spirit of OPR's suggested energy revisions within a consistent, objective, and manageable CEQA framework.</p>



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Appendix F	Suggested change	Rationale
<p><b>Appendix F: Energy Conservation</b></p> <p>I. Introduction The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include: (1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy sources. In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy (see Public Resources Code section 21100(b)(3)). Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, cost effectiveness may be determined more by energy efficiency than by initial dollar costs. A lead agency may consider the extent to which an energy source serving the project has already undergone environmental review that adequately analyzed and mitigated the effects of energy production.</p> <p>II. EIR Contents Potentially significant energy implications of a project shall be considered in an EIR to the extent relevant and applicable to the project. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances specific items may not apply or additional items may be needed. Where items listed below are applicable or relevant to the project, they should be considered in the EIR.</p> <p>A. Project Description may include the following items: 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.</p>	<p><b>Appendix F: Energy Conservation</b></p> <p>I. Introduction The goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include: (1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy sources. <u>California's regulatory scheme, through the California Building Code, Renewable Portfolios Standard, and other provisions encouraging solar and wind power installations, largely meets these goals.</u> In order to assure that energy implications are considered in project decisions, the California Environmental Quality Act requires that EIRs include <del>a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing</del> <u>mitigation measures necessary to avoid the</u> inefficient, wasteful and unnecessary consumption of energy (see Public Resources Code section 21100(b)(3)). <del>Energy conservation implies that a project's cost effectiveness be reviewed not only in dollars, but also in terms of energy requirements. For many projects, cost effectiveness may be determined more by energy efficiency than by initial dollar costs. A lead agency may consider the extent to which an energy source serving the project has already undergone environmental review that adequately analyzed and mitigated the effects of energy production.</del></p> <p><del>II. EIR Contents</del> <del>Potentially significant energy implications of a project shall be considered in an EIR to the extent relevant and to the project. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances specific items may not apply or additional items may be needed. Where items listed below are applicable or relevant to the project, they should be considered in the EIR.</del></p> <p><del>A. Project Description may include the following items:</del> <del>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.</del></p>	<p>As described above, AEP disagrees with the general need to address energy as a stand-alone CEQA impact. AEP believes that Appendix F is, at a minimum, in need of amendment to:</p> <ol style="list-style-type: none"> <li>Recognize the vast improvement in California's energy efficiency regulations since 1974 (estimated by the California Energy Commission to have saved Californian's over \$30 billion in energy costs between 1975 and 2013; and</li> <li>Better define measures to avoid the "inefficient, wasteful and unnecessary consumption of energy." Defining those situations under which Public Resources Code Section 21100(b)(3) requires mitigation would be a useful clarification of CEQA's requirements.</li> </ol> <p>Thus, while beyond the scope of the changes currently proposed by OPR (but brought into play by the proposed revisions to the sections pertaining to energy efficiency, AEP suggests the revisions at left to Appendix F. Recognizing California's asserted policy preference to encourage energy efficiency and increase the renewable energy consumption, AEP anticipates working with OPR in order to capture the spirit of OPR's suggested energy revisions within a consistent, objective, and manageable CEQA framework.</p>

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<p>[Appendix F, cont.]</p> <ol style="list-style-type: none"><li>2. Total energy requirements of the project by fuel type and end use.</li><li>3. Energy conservation equipment and design features.</li><li>4. Identification of energy supplies that would serve the project.</li><li>5. Total estimated daily vehicle trips to be generated by the project and the additional energy consumed per trip by mode.</li></ol> <p>B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.</p> <p>C. Environmental Impacts may include:</p> <ol style="list-style-type: none"><li>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 maybe discussed.</li><li>2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.</li><li>3. The effects of the project on peak and base period demands for electricity and other forms of energy.</li><li>4. The degree to which the project complies with existing energy standards.</li><li>5. The effects of the project on energy resources.</li><li>6. The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.</li></ol>	<p>[Appendix F, cont.]</p> <p><del>2.—Total energy requirements of the project by fuel type and end use.</del></p> <p><del>3.—Energy conservation equipment and design features.</del></p> <p><del>4.—Identification of energy supplies that would serve the project.</del></p> <p><del>5.—Total estimated daily vehicle trips to be generated by the project and the additional energy consumed per trip by mode.</del></p> <p><del>B. Environmental Setting may include existing energy supplies and energy use patterns in the region and locality.</del></p> <p><del>C. Environmental Impacts may include:</del></p> <ol style="list-style-type: none"><li><del>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 maybe discussed.</del></li><li><del>2.—The effects of the project on local and regional energy supplies and on requirements for additional capacity.</del></li><li><del>3.—The effects of the project on peak and base period demands for electricity and other forms of energy.</del></li><li><del>4.—The degree to which the project complies with existing energy standards.</del></li><li><del>5.—The effects of the project on energy resources.</del></li><li><del>6.—The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.</del></li></ol> <p><b><u>II. Definitions</u></b></p> <p><b><u>A project that meets all energy conservation requirements of the California Building Code (Title 24, California Code of Regulations), and that does not obstruct the implementation of state or local energy conservation codes, standards, or regulations, including codes, standards, and regulations for water conservation and that promote the use of solar or wind power, shall not be presumed to be wasteful or inefficient. For purposes of CEQA, the terms "wasteful," "inefficient" and "unnecessary" are defined as follows. Mitigation is required, when feasible, if a project would result in energy consumption that meets all three of these definitions. Energy encompasses electricity, natural gas, and petroleum energy resources.</u></b></p> <p><b><u>A. Wasteful: using more energy than is needed.</u></b></p> <p><b><u>B. Inefficient: not capable of producing desired results without wasting energy.</u></b></p> <p><b><u>C. Unnecessary: Not needed.</u></b></p>	
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<p>[Appendix F, cont.]</p> <p>D. Mitigation Measures may include:</p> <ol style="list-style-type: none"><li>1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.</li><li>2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.</li><li>3. The potential for reducing peak energy demand.</li><li>4. Alternate fuels (particularly renewable ones) or energy systems.</li><li>5. Energy conservation which could result from recycling efforts.</li></ol> <p>E. Alternatives should be compared in terms of overall energy consumption and in terms of reducing wasteful, inefficient and unnecessary consumption of energy.</p> <p>F. 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.</p> <p>G. Irreversible Commitment of Resources may include a discussion of how then project preempts future energy development or future energy conservation.</p> <p>H. Short-Term Gains versus Long-Term Impacts can be compared by calculating the project's energy costs over the project's lifetime.</p> <p>I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.</p>	<p>[Appendix F, cont.]</p> <p><b>III. EIR Content</b></p> <p><del>D</del>A. Mitigation Measures may include:</p> <ol style="list-style-type: none"><li>1. Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.</li><li>2. The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.</li><li>3. The potential for reducing peak energy demand.</li><li>4. Alternate fuels (particularly renewable ones) or energy systems.</li><li>5. Energy conservation which could result from recycling efforts.</li></ol> <p><del>E</del>B. Alternatives. <u>Where a project would have a wasteful, inefficient and unnecessary consumption of energy, EIR alternatives</u> should be compared in terms of overall energy consumption and in terms of reducing <u>the</u> wasteful, inefficient and unnecessary consumption of energy.</p> <p><del>F</del>C. Unavoidable Adverse Effects may include wasteful, inefficient and unnecessary consumption of energy <del>during</del><u>by</u> the project <del>construction, operation, maintenance and/or removal</del> that cannot be feasibly mitigated.</p> <p><del>G</del>D. Irreversible Commitment of Resources may include a discussion of how the project preempts future energy development or future energy conservation.</p> <p><del>H. Short-Term Gains versus Long-Term Impacts can be compared by calculating the project's energy costs over the project's lifetime.</del></p> <p>I. Growth Inducing Effects may include the estimated energy consumption of growth induced by the project.</p>	
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Water Supply Analysis in CEQA	Suggested change	Rationale
<p><b>CEQA Guidelines Section 15155</b></p> <p>§ 15155. <b>Water Supply Analysis</b>; City or County Consultation with Water Agencies.</p> <p>(a) The following definitions are applicable to this section.</p> <p>(1) A "water-demand project" means:</p> <p>(A) A residential development of more than 500 dwelling units.</p> <p>...</p> <p>(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.</p> <p>...</p> <p><b>(f) 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. An analysis of water supply in an environmental document shall include the following:</b></p> <p><b>(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.</b></p> <p><b>(2) An analysis of the long-term environmental impacts of supplying water throughout the life of all phases of the project.</b></p> <p><b>(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.</b></p> <p><b>(4) If the lead agency cannot confidently predict the availability of a particular water supply, 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.</b></p>	<p>§ 15155. <b>Water Supply Analysis</b>; City or County Consultation with Water Agencies.</p> <p>(a) The following definitions are applicable to this section.</p> <p>(1) A "water-demand project" means:</p> <p>(A) A residential development of more than 500 dwelling units.</p> <p><b><u>Only during a State Declared Emergency shall a "water demand" project shall be defined as one of more than 100 dwelling units.</u></b></p> <p>...</p> <p>(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. <b><u>Only during a State Declared Emergency a "water demand" project shall be defined as one of more than 100 dwelling units.</u></b></p> <p>...</p> <p><b><u>(6) "Low Impact Development" (LID) is a stormwater management strategy aimed at maintaining or restoring the natural hydrologic functions of a site to achieve natural resource protection objectives and fulfill environmental regulatory requirements.</u></b></p> <p><b><u>(7) "Recycled water" means disinfected secondary-wastewater.</u></b></p> <p><b><u>(8) "Potable Water Reuse" means the use of a community's wastewater as a source of drinking water.</u></b></p> <p><b><u>(9) "Reclaimed Wastewater" is a wastewater which as a result of treatment is suitable for uses other than potable use.</u></b></p> <p>...</p> <p><b>(f) The degree of certainty regarding the availability of water supplies will vary depending on the stage of project approval. A <del>lead agency</del> city or county lead agencies should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan. An analysis of water supply in an environmental document shall include the following:</b></p> <p><b>(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.</b></p> <p><b>(2) An analysis of the long-term environmental impacts of supplying water throughout the life of all phases of the project through to a reasonable planning horizon.</b></p>	<p>While beyond the scope of the changes currently proposed by OPR, AEP also suggests certain changes be made with respect to the Water Supply Analysis. California is facing an unprecedented water crisis challenging California's ability to provide the clean water needed for a healthy environment, a healthy population and a healthy economy, both now and in the future.</p> <p>In response, California is rapidly adapting to its new, water-conscious reality by developing and widely implementing water conservation, recycling, and reuse efforts. The quality of water may vary depending upon its intended use: irrigation and landscaping; industrial uses; groundwater recharge; potable drinking water; etc. Currently, recycled water is used within the state for irrigation and industrial purposes. "Pure water" technology (<i>i.e.</i>, secondary treated water which is then subject to a four-step Advanced Water Treatment (AWT) purification process of Ozone (O3) Pre-Treatment, Membrane Filtration (MF), Reverse Osmosis (RO), and Oxidation with Ultra Violet Light (UV) and Hydrogen Peroxide (H2O2)) is being adopted in California and it is already in use in Orange County and Los Angeles. Water reuse may be used for industrial processes, landscape irrigation, and for crops suitable for consumption.</p> <p>Further, by directing stormwater runoff to areas where it can "recharge" groundwater, or capturing rain from rooftops in rain barrels and cisterns to irrigate landscapes or flush toilets, California could dramatically increase the amount of water available for local supply. OPR's August 5, 2009 Technical Advisory, <i>CEQA and Low Impact Development Stormwater Design: Preserving Stormwater Quality and Stream Integrity Through California Environmental Quality Act (CEQA) Review</i> (available here: <a href="http://opr.ca.gov/docs/Technical_Advisory_LID.pdf">http://opr.ca.gov/docs/Technical_Advisory_LID.pdf</a>) suggests Low Impact Development (LID) as a stormwater management strategy to maintain and/or restore the natural hydrologic functions of a site to achieve natural resource protection objectives and fulfill environmental regulatory requirements. LID employs a variety of natural and built features to reduce the rate of surface water runoff, filter pollutants out of runoff, and facilitate infiltration of water into the ground. Compliance with CEQA entails three basic (and familiar) steps:</p> <ul style="list-style-type: none"> <li>▪ Identify changes to water quality and hydrology resulting from the proposed project.</li> <li>▪ Assess the significance of the impacts caused by the proposed project.</li> <li>▪ If the impacts are found to be significant, identify feasible alternatives and/or feasible mitigation measures that will reduce the project's impact below significance.</li> </ul> <p>Against this background, AEP suggests the following edits to § 15155:</p> <ol style="list-style-type: none"> <li>1. Because CEQA Guideline § 15155(f) deals solely with Water Supply Assessment (WSA) requirements, and WSA requirements only apply only to cities and counties, AEP suggests the language of 15155(a)-(e) refer to "city or county lead agencies" as opposed to "lead agencies" in general.</li> <li>2. To limit the impermissible speculation that may result from the breadth of subsection (f)(2) as written, AEP suggests language for the establishment of a "reasonable planning horizon" in order to place reasonable limits on how far into the future a city or county must plan.</li> </ol>

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[CEQA Guidelines § 15155, cont.]

**(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-city~~ or county lead agencies cannot confidently predict the availability of a particular water supply, 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.**

**(g) For projects that do not meet the definition of a "water-demand project" under Section 15155(a), the analysis described in section 15155(f)(1) – (4) may be used to determine whether adequate water supplies are available to serve the project.**

**(h) If the analysis of water supply finds inadequate water supplies are available to serve the project, the water demand project shall incorporate water conservation measures to decrease the project's forecasted water demand to the extent feasible. Where not otherwise required or precluded by existing law, such measures may include, but are not limited to: improving the efficiency of water delivery operations; implementation of water conservation practices; use of water efficient fixtures; use of recycled water; use of reclaimed wastewater; use of non-potable water for industrial applications; potable water reuse; use of drought-tolerant and/or low water demand landscaping; and Low Impact Development.**

[CEQA Guidelines § 15155, cont.]

3. AEP suggests new subsection (g) to make clear that for projects that do not meet the definition of a "water-demand project" under Section 15155(a), the analysis described in section 15155(f)(1) – (4) may be used to determine whether adequate water supplies are available to serve the project.

4. AEP suggests new subsection (h) which describes potential measures that should be undertaken to the extent feasible, if the analysis of water supply finds inadequate water supplies are available to serve the project. AEP notes that these measures are generally written in order to be broadly applicable to a wide range of projects, but are intended to be consistent with:

- Best management practices (BMPs) defined by the California Urban Water Conservation Council (e.g., Utility Operations (efficiency of water deliveries, metering and billing, and retail water pricing); Public and School Education Programs; Residential Conservation Programs (water efficient fixtures); Commercial, Institutional and Industrial Uses (conservation measures for industrial processes); and Landscape Programs (water efficient irrigation, frequency of irrigation, drought tolerant landscaping)).
- State mandated conservation programs (e.g., Governor's Proclamation 1-17-2014; Executive Order B28 -14).
- State Water Resources Control Board resolutions and regulations regarding water conservation pricing to promote efficiencies (e.g., Executive Order B 29-15; Proposition 218).

(See Cal. Pub. Res. Code § 21151.9 (referencing Cal. Water Code § 10910, et seq. (Water Supply Planning to support existing and planned future uses)); Cal. Water Code §§ 350 – 359 (Ch. 3, Water Shortage Emergencies), 375 – 378 (Ch. 3.5, Water Conservation Programs)).



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Baseline	Suggested change	Rationale
<p><b>CEQA Guidelines Section 15125</b></p> <p>§ 15125. Environmental Setting                      (a) An EIR must include a description of the physical environmental conditions in the vicinity of the project. <del>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.</del> 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. <b><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></b>  <b><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, a lead agency may define existing conditions by referencing historic conditions that are supported with substantial evidence. In addition to existing conditions, a lead agency may also use a second baseline consisting of projected future conditions that are supported by reliable projections based on substantial evidence in the record.</u></b>  <b><u>(2) If a lead agency demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public, it may use a different baseline. Use of projected future conditions must be supported by reliable projections based on substantial evidence in the record.</u></b>  <b><u>(3) A lead agency may not rely on hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline.</u></b>                      ...</p>	<p>§ 15125. Environmental Setting                      (a) An EIR must include a description of the physical environmental conditions in the vicinity of the project. <del>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.</del> 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. <b><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></b>  <b><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, a lead agency may define existing conditions by referencing historic conditions that are supported with substantial evidence. In addition to existing conditions, a lead agency may also use a second baseline consisting of projected future conditions <b>provided it is that are</b> supported by reliable projections based on substantial evidence in the record <b>and is not hypothetical.</b></u></b>  <b><u>(2) If a lead agency demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public, it may use a different baseline. Use of <b>only</b> projected future conditions <b>as the sole baseline</b> must be supported by reliable projections based on substantial evidence in the record <b>and not be hypothetical.</b></u></b>  <b><u>(3) A lead agency may not rely on hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline.</u></b>                      ...</p>	<p>AEP understands the proposed revisions underscore the findings in <i>Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, et al.</i> (2013) 57 Cal.4th 439 and agrees with the intent of the proposed revisions to CEQA Guidelines § 15125. In particular, that future environmental conditions may be used as the environmental baseline for a project, either (as conditions may warrant) on their own and/or in conjunction with an existing conditions baseline, but that hypothetical conditions may not be relied upon as the environmental baseline.</p>

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Deferral of Mitigation Details		
CEQA Guidelines Section 15126.4	Suggested change	Rationale
<p>§ 15126.4. Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects. ...</p> <p>(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures <del>should shall</del> not be deferred until some future time. <del>However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.</del> <u>Deferral of the specific details of mitigation measures may be permissible when it is impractical or infeasible to fully formulate the details of such measures at the time of project approval, or where a regulatory agency other than the lead agency will issue a permit for a project that will impose mitigation requirements, provided that the lead agency has:</u></p> <ol style="list-style-type: none"> <li><u>1. fully evaluated the significance of the environmental impact and explained why it is not feasible or practical to formulate specific mitigation at the time of project approval;</u></li> <li><u>2. commits to mitigation;</u></li> <li><u>3. lists the mitigation options to be considered, analyzed and possibly incorporated in the mitigation plan; and</u></li> <li><u>4. adopts specific performance standards that will be achieved by the mitigation measure.</u></li> </ol>	<p>§ 15126.4. Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects. ...</p> <p>(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures <del>should shall</del> not be deferred until some future time. <del>However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.</del> <u>Deferral of the specific details of mitigation measures may be permissible when it is impractical or infeasible to fully formulate the details of such measures at the time of project approval, or where a regulatory agency other than the lead agency will issue a permit for a project that will impose mitigation requirements, provided that the lead agency has:</u></p> <ol style="list-style-type: none"> <li><u>1. fully evaluated the significance of the environmental impact and explained why it is not feasible or practical to formulate specific mitigation at the time of project approval;</u></li> <li><u>2. commits to mitigation;</u></li> <li><u>3. lists the mitigation options to be considered, analyzed and possibly incorporated in the mitigation plan; <del>and</del> or</u></li> <li><u>4. adopts specific performance standards that will be achieved by the mitigation measure.</u></li> </ol>	<p>AEP generally supports this edit as proposed by OPR with the one small, but important suggested edit noted.</p> <p>Generally, the proposed revisions appear to reflect standard practice when deferring the development of detailed mitigation requirements. The proposed revisions are beneficial in that they establish criteria that will provide guidance and consistency related to determinations by agencies that it is appropriate to defer the development of detailed mitigation measure requirements.</p> <p>However, AEP notes that the "and" between criteria (B)(3) and (B)(4) should be "or." As written, the proposed revisions suggest that deferral of specific mitigation measure details is only proper when the specific mitigation is found infeasible ((B)(1)) <i>and</i> the project commits to the mitigation ((B)(2)) <i>and</i> list mitigation options (B)(3) <i>and</i> adopt specific performance standards ((B)(4)). The requirement of (B)(1)(finding of infeasibility) is mutually exclusive of the remaining options and thus the use of "and" between clauses (B)(3) and (B)(4) is improper.</p> <p>Consistent with the Aug. 11 Discussion Draft and cases cited therein, AEP notes that satisfaction of any one of the criteria under § 15126.4(B) is sufficient to excuse the immediate development of specific details of the mitigation measures. (See Aug. 11 Discussion Draft at 97 ("...OPR proposes to clarify that when deferring the specifics of mitigation, the lead agency should <i>either</i> provide a list of possible mitigation measures, <i>or</i> adopt specific performance standards" (emphasis added)).</p>



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Responses to Comments		
CEQA Guidelines Section 15087	Suggested change	Rationale
<p>§ 15087. Public Review of Draft EIR ...                      (c) The notice shall disclose the following: ...                      (2) The starting and ending dates for the review period during which the lead agency will receive comments, <b>and the manner in which the lead agency will receive those comments.</b> If the review period is shortened, the notice shall disclose that fact.                      ...                      (5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.</p>	<p>§ 15087. Public Review of Draft EIR ...                      (c) The notice shall disclose the following: ...                      (2) The starting and ending dates for the review period during which the lead agency will receive comments, <b>and the manner in which the lead agency will receive those comments.</b> If the review period is shortened, the notice shall disclose that fact.                      ...                      (5) The address where copies of the EIR and all documents <b>incorporated by reference and cited</b> <del>referenced</del> in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.</p>	<p>Regarding § 15087(c)(2), AEP lauds OPR's efforts (as bolstered by case law) to provide further guidance regarding how timely comments on CEQA documents shall be considered and evaluated. However, while AEP does not object to this change in (c)(2), AEP notes that the new language may tempt lead agencies to unreasonably limit the ways in which they accept comments. To this end, AEP suggests OPR consider a new Guideline that clarifies how a lead agency may reasonably limit the forms of comments it is required under CEQA to accept, and where (<i>i.e.</i>, we suggested the Notice of Availability and Notice of Intent) the lead agency must specify its reasonable limitations.</p> <p>Regarding § 15087(c)(5), while outside of the scope of OPR's currently proposed changes, AEP has suggested edits to increase consistency amongst the CEQA Guidelines and case law. Specifically, Section 15148 (<i>Citation</i>) calls out the need for EIRs to cite all sources that an EIR has depended on and describes how an EIR should identify what portion of the cited materials was used by the EIR to assist the reader in their review (the ability to find information in an EIR and inform the public was also addressed in the California Supreme Court's <i>Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova</i> decision). AEP's proposed changes also allow greater consistency with Section 15150 (<i>Incorporation by Reference</i>), but is specific to EIRs.</p>

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CEQA Guidelines Section 15088	Suggested change	Rationale
<p>§ 15088. Evaluation of and Response to Comments...</p> <p>(b) The lead agency shall provide a written proposed response, <b><u>either in a printed copy or in an electronic format,</u></b> to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.</p> <p>(c) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice. <b><u>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.</u></b></p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>

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Pre-Approval Agreements		
CEQA Guidelines Section 15004	Suggested change	Rationale
<p>§ 15004. Time of Preparation...</p> <p>(2) To implement the above principles, public agencies 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, agencies shall not:</p> <p>(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, <del>except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance.</del></p> <p>...</p> <p><u>(4) 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, it shall not grant any vested rights prior to compliance with CEQA. Further, any such agreement should:</u></p> <p><u>(A) Condition the agreement on compliance with CEQA;</u></p> <p><u>(B) Not bind any party, or commit to any definite course of action, prior to CEQA compliance; and</u></p> <p><u>(C) Not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the "no project" alternative. ...</u></p>	<p>§ 15004. Time of Preparation...</p> <p>(2) To implement the above principles, public agencies 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, agencies shall not:</p> <p>(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, <u>except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance.</u></p> <p>...</p> <p><u>(4) 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, it shall not grant any vested <del>rights</del> <u>development entitlements</u> prior to compliance with CEQA. Further, any such agreement should:</u></p> <p><u>(A) Condition the agreement on compliance with CEQA;</u></p> <p><u>(B) Not bind any party, or commit to any definite course of action, prior to CEQA compliance; and</u></p> <p><u>(C) Not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the "no project" alternative. ...</u></p>	<p>AEP suggests that final clause of (b)(2)(A) not be deleted. There is a substantial line of case law, including but not limited to seminal cases such as <i>Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116</i>, which rely on, cite to, and quote the text that OPR proposes to delete. The holdings of these important cases are not in question and thus deleting the language will likely prove confusing when CEQA practitioners and future courts cite to these precedents. Further, keeping the language in (b)(2)(A) does not negate or conflict with the newly proposed language in (b)(4).</p> <p>AEP further suggests revising the language "not grant any vested rights" to "not grant any vested development entitlements," as even the most basic of option agreements grant a developer some form of enforceable "rights."</p>
Lead Agency by Agreement		
CEQA Guidelines Section 15051	Suggested change	Rationale
<p>§ 15051. Criteria for Identifying the Lead Agency...</p> <p>(c) Where more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question <u>will normally shall</u> be the lead agency.</p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>

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Common Sense Exemption		
CEQA Guidelines Section 15061	Suggested change	Rationale
<p>§ 15061. Review for Exemption ...                      (b) A project is exempt from CEQA if: ...                      (3) The activity is covered by the <b>general rule common sense exemption</b> 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.</p>	<p>§ 15061. Review for Exemption ...                      (b) A project is exempt from CEQA if: ...                      (3) The activity is covered by the <b>general rule common sense exception exemption</b> 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.</p>	<p>AEP notes that 15061(b)(3) is referred to by CEQA practitioners and courts (<i>see e.g., Muzzy Ranch Co. v. Solano County Airport Land Use Com.</i> (2007) 41 Cal. 4th 372, 389) as the "common sense exemption" (rather than "exception").</p> <p>Notably, as OPR is aware, if a project qualifies under the rule, 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") would likely create confusion and defeat OPR's stated purpose of matching "practitioners' customary use of the term 'common sense [exemption]'" and to prevent possible confusion for others who see or hear references to the term but cannot find it in the text of the CEQA Guidelines."</p>
Preparing an Initial Study		
CEQA Guidelines Section 15063	Suggested change	Rationale
<p>§ 15063. Initial Study...  <b>(4) The lead agency may use any of the arrangements or combination of arrangements described in Section 15084(d) to prepare an initial study.</b></p>	<p>§ 15063. Initial Study...  <del>(4) The lead agency may use any of the arrangements or combination of arrangements described in Section 15084(d) to prepare an initial study.</del> <u>The lead agency may choose one of the following arrangements or a combination of them for preparing an initial study:</u>                      (i) <u>Preparing the initial study directly with its own staff.</u>                      (ii) <u>Contracting with another entity, public or private, to prepare the initial study.</u>                      (iii) <u>Accepting a draft prepared by the applicant, a consultant retained by the applicant, or any other person.</u>                      (iv) <u>Executing a third party contract or memorandum of understanding with the applicant to govern the preparation of an initial study by an independent contractor.</u>                      (v) <u>Using a previously prepared initial study.</u></p>	<p>For clarity, AEP suggests providing language specific to the preparation of initial studies rather than making references to language drafted in support of the preparation of draft EIRs.</p>

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<b>Consultation with Transit Agencies</b>		
<b>CEQA Guidelines Section 15072</b>	<b>Suggested change</b>	<b>Rationale</b>
<p>§ 15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration...</p> <p>(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site. <b><u>The lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.</u></b></p>	No AEP suggested changes.	AEP supports this edit as proposed by OPR.
<b>CEQA Guidelines Section 15086</b>	<b>Suggested change</b>	<b>Rationale</b>
<p>§ 15086.Consultation Concerning Draft EIR ...</p> <p>(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site. <b><u>The lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.</u></b></p>	No AEP suggested changes.	AEP supports this edit as proposed by OPR.
<b>Citations in Environmental Documents</b>		
<b>CEQA Guidelines Section 15072</b>	<b>Suggested change</b>	<b>Rationale</b>
<p>§ 15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration...</p> <p>(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents <b><u>incorporated by reference</u></b> <del>referenced</del> in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.</p>	No AEP suggested changes.	AEP supports this edit as proposed by OPR.

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CEQA Guidelines Section 15087	Suggested change	Rationale
<p>§ 15087. Public Review of Draft EIR ... (5) The address where copies of the EIR and all documents <b>incorporated by reference</b> <del>referenced</del> in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.</p>	<p>No AEP suggested changes.</p>	<p>AEP supports this edit as proposed by OPR.</p>

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Posting Notices with the County Clerk	Suggested change	Rationale
<p><b>CEQA Guidelines Section 15082</b></p> <p>§ 15082. Notice of Preparation and Determination of Scope of EIR (a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send <b>a notice of preparation stating that an environmental impact report will be prepared</b> to the Office of Planning and Research and each responsible and trustee agency <del>a notice of preparation stating that an environmental impact report will be prepared and file with the county clerk of each county in which the project will be located.</del> This notice shall also be sent to every federal agency involved in approving or funding the project. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5.</p> <p>(1) The notice of preparation shall provide the responsible and trustee agencies, <del>and</del> the Office of Planning and Research <b>and county clerk</b> with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include: ...</p>	<p>§ 15082. Notice of Preparation and Determination of Scope of EIR (a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send <b>a notice of preparation stating that an environmental impact report will be prepared</b> to the Office of Planning and Research and each responsible and trustee agency <del>a notice of preparation stating that an environmental impact report will be prepared and file with the county clerk of each county in which the project will be located.</del> <b>Copies of all such notices shall be posted within 24 hours of receipt in the office of the county clerk. The county clerk shall post documents electronically at the county clerk website and must be viewable by the public beginning not later than January 2017 for new CEQA postings as of January 2, 2017. Following the public posting period of the CEQA document, the county clerk shall move the documents to a data base to store documents for historical viewing by the public. Each notice shall be available for public inspection and shall be posted by the county clerk with 24 hours of receipt and remain posted for a period of at least 45 days for an EIR (30 days for all other types of CEQA documents).</b> This notice shall also be sent to every federal agency involved in approving or funding the project. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5.</p> <p>(1) The notice of preparation shall provide the responsible and trustee agencies, <del>and</del> the Office of Planning and Research <b>and county clerk</b> with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include: ...</p>	<p>AEP suggests the noted changes in order to broaden the applicability of these sections to Negative Declarations and CEQA Exemptions (in addition to EIRs).</p> <p>AEP further suggests edits requiring county clerks to post documents electronically at all County Clerk Recorder websites within California beginning not later than January 2017. Other CEQA Guidelines sections likely requiring amendment based on the changes proposed here include §§ 15082(a)(Notice of preparation and Determination of Scope of EIR) , 15062(c)(2) (Notice of Exemption), 15072(d) (Notice of Intent), 15075(e) (Notice of Determination on a Project for which a Proposed Negative or Mitigated Negative Declaration has been Approved), and § 15094(e) (Notice of Determination)</p>



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<b>Time Limits for Negative Declarations</b>		
<b>CEQA Guidelines Section 15107</b>	<b>Suggested change</b>	<b>Rationale</b>
<p>§ 15107. Completion of Negative Declaration for Certain Private Projects</p> <p>With 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 must be completed and approved within 180 days from the date when the lead agency accepted the application as complete. <b><u>Lead agency procedures may provide that the 180-day time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.</u></b></p>	No AEP suggested changes.	<p>AEP supports this edit as proposed by OPR.</p> <p>The proposed edit seems reasonable given that the CEQA Guidelines already provide this flexibility for EIRs and more complicated Negative Declarations can take additional time to prepare.</p>
<b>Project Benefits</b>		
<b>CEQA Guidelines Section 15124</b>	<b>Suggested change</b>	<b>Rationale</b>
<p>§ 15124. Project Description ...</p> <p>(b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project <b><u>and may discuss the project benefits.</u></b> ...</p>	No AEP suggested changes, <i>but see</i> rationale notes.	<p>AEP notes that the proposed additional text provides that the project description "<i>may</i>" discuss project benefits. AEP would underscore that a discussion of project benefits is not required under CEQA. Project benefits need <i>not</i> be discussed if the CEQA lead agency believes such a discussion would not be beneficial or appropriate in a particular situation.</p>
<b>Joint NEPA/CEQA Documents</b>		
<b>CEQA Guidelines Section 15222</b>	<b>Suggested change</b>	<b>Rationale</b>
<p>§ 15222. Preparation of Joint Documents</p> <p>If a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency by the time when the lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR-EIS or negative declaration-finding of no significant impact. 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. <b><u>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.</u></b> This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.</p>	No AEP suggested changes.	AEP supports this edit as proposed by OPR.

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Using the Emergency Exemption		
CEQA Guidelines Section 15269	Suggested change	Rationale
<p>§ 15269. Emergency Projects</p> <p>The following emergency projects are exempt from the requirements of CEQA. ...</p> <p>(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare. <b>Emergency repairs include those that require a reasonable amount of planning.</b></p> <p>(c) Specific actions 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, <b>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.</b></p> <p>...</p>	<p>§ 15269. Emergency Projects</p> <p>The following emergency projects are exempt from the requirements of CEQA. ...</p> <p>(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare. <b>Emergency repairs include those that require a reasonable amount of planning.</b></p> <p>(c) Specific actions 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, <del>but this exclusion does not apply</del> <b>unless (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.</b></p> <p>...</p>	<p>AEP suggests the non-substantive changes at left for clarity.</p>
When is a Project Discretionary		
CEQA Guidelines Section 15357	Suggested change	Rationale
<p>§ 15357. Discretionary Project</p> <p>"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, <del>or</del> regulations, <b>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.</b> 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 <i>et seq.</i>) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).</p>	<p>§ 15357. Discretionary Project</p> <p>"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, <del>or</del> regulations, <b>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.</b> 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 <i>et seq.</i>) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c). <b>The lead agency's grant of a variance from applicable statutes, ordinances, regulations, or other fixed standards constitutes a discretionary action.</b></p>	<p>AEP suggests the deletion of the sentence beginning with "The key question..."</p> <p>First, the addition of the words "or other fixed standards" is sufficient to generally distinguish between discretionary or ministerial projects.</p> <p>Second, 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>In the interests of clarity, AEP also suggests the variance as a further example of a discretionary action.</p>

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<b>Conservation Easements as Mitigation</b>	<b>Suggested change</b>	<b>Rationale</b>
CEQA Guidelines Section 15370 § 15370. Mitigation ... (e) Compensating for the impact by replacing or providing substitute resources or environments, <b><u>including through permanent protection of such resources in the form of conservation easements.</u></b>	No AEP suggested changes.	AEP supports this edit as proposed by OPR.