## Martha Alvarez, MMC

**From:** Christina <christinacrowell@gmail.com>
**Sent:** Tuesday, February 7, 2023 10:35 AM
**To:** List - City Council
**Subject:** [EXTERNAL] More PD

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

I live in the hill section of MB and I am one of the families that pay for our own security patrol. I never thought when I moved to Manhattan Beach that this is the route. I would have to go to feel safe at night. I think it's a very wise choice to add more police patrolling our town. In the last two years, it has felt very unsafe in Manhattan Beach.
Thank you,
Christina Crowell
John st resident

Sent from my iPhone

## Martha Alvarez, MMC

**From:** Vikki Mcmahon <fvmcmahon@verizon.net>
**Sent:** Tuesday, February 7, 2023 8:45 AM
**To:** List - City Council
**Subject:** [EXTERNAL] MBPD

**EXTERNAL EMAIL:** Do not click links or open attachments unless you trust the sender and know the content is safe.

Hi there,
As you know ... I'm currently in the MBPD Community Academy, along with a few friends. We are very impressed with our PD and how professional they are. I invite any one of you to addend a meeting, which are Thursday evenings from 5:30-9pm. Please vote yes to adding additional PD to the department - there is nothing more important than feeling safe in our community. Thanks much.
Vikki McMahon

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2023 FEB -6 AM 10: 53

CITY CLERK'S OFFICE
MANHATTAN BEACH, CA

February 6, 2023

Manhattan Beach City Council
1400 Highland Ave.
Manhattan Beach, CA 90266

RE: REQUEST FOR CITY COUNCIL TO RECONSIDER THE JANUARY 19, 2023 DECISION TO APPROVE THE HIGHROSE EL PORTO PROJECT WITHOUT FIRST CONDUCTING REQUIRED CEQA REVIEW

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City Council,

I support development generally, housing development specifically, and the Highrose Project particularly; with limited exceptions. But I can't in good faith support a decision to build multi-family housing on commercial/mixed-use property, adjacent to an operating oil refinery, unless and until proper environmental studies pursuant to CEQA have been conducted. I understand Legislative concerns regarding homelessness and a purported housing supply shortage, but relevant statutes, regulations and case law, simply do not allow the Lead Agency to exempt the Highrose El Porto project from conducting required CEQA review.

I understand the former City Council denied the Highrose project on appeal when brought to a vote on October 18, 2022; a split majority voted 3-2 against approving the project, but never made written findings to support their decision. Why didn't the City Council make their written findings and file them accordingly? The Applicant then filed a complaint in Superior Court seeking $52 million in estimated damages, and the Housing Department served a Notice of Violation because the City never filed written findings supporting their decision to deny the project. These recent developments compelled the current City Council to reverse the former City Council's *final* decision, and subsequently voted to approve the Highrose Project in a 3-2 split decision; this decision is ill-fated in many regards.

The Legislative intent underlying the *State Density Bonus Law* is codified in Government Code § 65917[1], "The density bonus or other incentives offered by the city...shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments." It is antithetical to believe the Legislature intended to exempt low-income housing developments from the environmental safeguards codified in the Public Resources Code and enacted by the CEQA Guidelines. The SDBL prohibits a local agency from granting an incentive or waiver that will have a specific, adverse impact upon public health or safety (Gov. Code § 65915(d)(1) and 65915(e)(1))[2]. Exempting CEQA review waives mitigation of *Mandatory Findings of Significance* that *may* have a significant effect on the environment and the future residents of the Project; that waiver will potentially result in a specific, adverse impact

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[1] *See* attached *State Density Bonus Law*, Gov. Code § 65917.
[2] *See* attached *State Density Bonus Law*, Gov. Code § 65915(d)(1) and § 65915(e)(1).

upon public health, safety, the environment, or on property. Moreover, the *Housing Accountability Act* is codified in Government Code § 65589.5; relevant here is § 65589.5(e)[3], "Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the *California Coastal Act* of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code, or otherwise complying with the *California Environmental Quality Act* (Division 13 (commencing with Section 21000) of the Public Resources Code)."

The Department of Housing and Community Development published their *Updated Streamlined Ministerial Approval Process Guidelines*[4] on March 30, 2021. Ministerial Review is defined (in relevant part): "The public official merely ensures that the proposed development meets all the 'objective zoning standards,' 'objective subdivision standards,' and 'objective design review standards' in effect at the time that the application is submitted to the local government, but uses no special discretion or judgment in reaching a decision." (Section 102(n))[5]. The Housing Department's own guidance establishes clear standards that the 'Ministerial Approval Process' pertains to zoning, subdivision, and design review; not environmental review contemplated by the Public Resources Code and the CEQA Guidelines. The Department's updated guidelines make clear, "Approval of ministerial processing does not preclude imposing standard conditions [environmental review] of approval as long as those conditions [CEQA Guidelines] are objective and broadly applicable to development within the locality (Section 301(4))[6].

The Department of Housing and Community Development's September 15, 2020 Technical Advisory resolves any and all confusion; *Appendix A*[7] answers 'Frequently Asked Questions.' The fourth question in Appendix A asks, "Are housing developments still subject to the California Environmental Quality Act (CEQA) if they qualify for the protections under the Housing Accountability Act? Yes. Jurisdictions are still required to comply with CEQA (Division 13 (commencing with Section 21000) of the Public Resources Code) as applicable to the project (Gov. Code, § 65589.5, subd. (e).)"

CEQA Guidelines require the lead agency to first determine if the proposal is a project; there is no dispute, Highrose El Porto is a government permitted private project subject to CEQA. Guidelines then require a lead agency to determine if a 'project' has any applicable exemptions. The former Community Development Director invoked an

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[3] See attached *Housing Accountability Act, Gov. Code* § 65589.5(e).
[4] *See* attached Department of Housing and Community Development, *Streamlined Ministerial Approval Process Guidelines*[4] (March 30, 2021).
[5] Ibid., pp. 2, 3.
[6] Ibid., pp. 11,12.
[7] *See* attached *Appendix A*, Department of Housing and Community Development, Technical Advisory, September 15, 2020.

unspecified statutory exemption, declaring the Project is a ministerial project and exempt from CEQA review. She didn't declare which *specific* statutory exemption she was invoking; just some unspecified statutory exemption that was apparently invoked under the misguided belief that the 'Ministerial Approval Process' for density bonus entitlements, qualified the Highrose El Porto project for unimpeded CEQA exemption. The decision to invoke statutory exemption from CEQA review because the Lead Agency is precluded from making any discretionary decisions for zoning, subdivision or design review pursuant to the SDBL, is a misapplication of the law and amounts to maladministration.

It appears the City pushed the ministerial approval criteria for density bonus entitlements and misapplied them to ministerial exemption from CEQA review, in support of their proposed 6th Cycle Housing Element Update. By establishing this precedent, the City will be exempt from every residential development required to meet the City's 6th Cycle Regional Housing Needs Assessment allocation, consistent with the 6th Cycle HEU. The City's Community Development Department directed and supervised the preparation of that proposed Initial Study/Negative Declaration in the proposed 6th Cycle HEU. Although prepared with assistance from consulting firm Dudek, the content contained within and the conclusions drawn by that IS/ND reflect the independent judgment of the City. And the City's independent judgment as expressed in their proposed 6th Cycle HEU concludes, "Projects with six units or more that qualify for a density bonus under State law are permitted subject only to a Precise Development Plan reviewed and approved by the City, which is similarly a ministerial process exempt from CEQA." The City admits in the 6th Cycle HEU, "The precise language of the HEU programs and associated MBMC regulations would generally allow for a streamlined review process only under a limited and defined set of circumstances, where the primary objective is the achievement of measurable progress towards meeting the City's 6$^{th}$ Cycle RHNA allocation, as required by State law. In addition, when unique situations present themselves, housing projects would likely undergo a more comprehensive environmental review, where any impacts identified with the project would be addressed through mitigation specific to the impact." In other words, the City believes their own discretionary authority shall determine when CEQA applies, not the collective authorities of the Legislature, Judicial precedents, the guidelines enacted by the California Natural Resources Agency, or the policies established by the Office of Planning and Research. The City not only thinks they are above the law, they seemingly believe using their authority to violate the law is within the scope of their rightful authority.

Had the lead agency NOT invoked statutory exemption, CEQA Guidelines would then require an Initial Study; this Initial Study was never conducted. The Initial Study is where the lead agency could have invoked a tiered-Initial Study, or a community-level environmental review, if such provision(s) actually applied. Local agency standards for tiering prior Initial Studies, or relying on community-level EIR's and/or Negative Declarations during an Initial Study, provides the public an opportunity to review the City's findings and challenge the veracity of the City's assertions. But the public never had the opportunity to review and question the applicability of tiered Initial Studies, or

community-level EIR's or Neg-Dec's because the City never conducted an Initial Study for the Highrose Project. Instead, the Lead Agency prematurely invoked an unspecified statutory exemption from CEQA review because of the 'Ministerial Approval Process' associated with zoning, subdivision and design review components of the Highrose El Porto project, as they relate to SDBL entitlements. Why did the Lead Agency not afford the fullest possible protection to the environment within the reasonable scope of the statutory language?

After City Council denied the Project on appeal, the City Attorney assumed the role of Lead Agency in a subsequent public hearing and made unverified assertions the Highrose project was exempt from further CEQA review for a variety of different reasons; assertions that would ordinarily be made with findings from the Initial Study that the public would have an opportunity to review and consider challenging if those assertions abused the Lead Agency's discretion, or were otherwise found to be invalid. What the public heard at the January 19, 2023 City Council meeting, were unsubstantiated assertions from the City Attorney that CEQA review was previously conducted and applicable as demonstrated by Negative Declarations when the LCP was recertified by the California Coastal Commission in 1994, and again when the 4th Cycle Housing Element was amended and approved by the 5th cycle Housing Element in 2014. But these assertions were never properly evaluated since the Initial Study was never actually conducted; the public never had any chance to contemplate the veracity or applicability of these assertions. Why is the City sidelining the public's environmental concerns over this large-scale, multi-family, high-density housing project, situated adjacent to an active oil refinery, and steamrolling the approval without first complying with environmental review standards?

Instead of requiring an Initial Study and subsequent EIR, the City breached their duty to make required findings when they invoked statutory exemption from CEQA review. It doesn't seem proper the City Attorney can assume the role of Lead Agency at a public hearing after City Council issued their final ruling on October 18, 2022, and then make discretionary decisions regarding CEQA compliance and claims of exemption without first conducting the Initial Study. If the City Attorney truly believes there is no actual statutory exemption but instead the Highrose project is exempt from CEQA review because of a prior Neg-Dec when the LCP was recertified in 1994, and/or the 4th Cycle Housing Element was certified in 2014, why is he supplementing the record with unsubstantiated assertions instead of conducting the Initial Study to make such findings?

Perhaps the City is abandoning the former decision to invoke an unspecified statutory exemption and is now asserting exemption after considering 14 CCR § 15183, *Projects Consistent with a Community Plan, General Plan, or Zoning*[8]. This regulation mandates projects that are consistent with zoning, plans, and policies for which an EIR was certified, shall not require additional environmental review, "[e]xcept as might be necessary to examine whether there are project-specific significant effects which are

[8] *See* attached CEQA Guideline 14 CCR § 15183, *Projects Consistent with a Community Plan, General Plan, or Zoning.*

peculiar to the project or its site." (14 CCR § 15183(a))[9]. The City had a duty to examine environmental effects in an initial study or other analysis, that are peculiar to the project, are potentially significant off-site impacts, and cumulative impacts, all of which were not analyzed as significant effects in a prior EIR, and previously identified significant effects when new information determines a more severe adverse impact than discussed in a prior EIR (14 CCR § 15183(b)(1-4))[10]. Environmental effects include potentially significant offsite or cumulative impacts and require CEQA review even if a prior EIR is applied, but these offsite or cumulative impacts were not adequately discussed in the prior EIR (14 CCR § 15183(j))[11]. What significant impacts were discussed in the prior undisclosed EIR and/or Neg-Dec's the City Attorney discussed on the record with his assertions no further review is required because of prior Neg-Dec's, and why wasn't the public allowed to evaluate or respond to this unverified assertion?

The public also heard the owner of the land where the proposed project is being constructed, conducted a Phase I and Phase II site assessment before the property was purchased; but site assessments don't constitute Initial Studies, they aren't a substitute for an EIR, nor do they substantiate a Neg-Dec. The public heard the City Attorney and the Acting Community Development Director repeatedly insist CEQA review only considers the effects of the project on the environment, not the effects of the environment on the project; the California Supreme Court has an entirely different understanding of the law than City staff does, "When a proposed project risks exacerbating those environmental hazards [existing environmental conditions on a project's future users or residents] or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users." (*California Building Industry Association,* v. *Bay Area Air Quality Management District* (2015) 62 Cal4th 369, 196 Cal.Rptr.3d 94, 362 P.3d 792.)[12] Footnote 11 in the Court's published opinion further explains, "Because CEQA does sometimes require analysis of the effect of existing conditions on a project's future residents or users, such analysis is not the "reverse" of what CEQA mandates. (See pp. 391-392, post.)" Why did the City Attorney and Acting Community Development Director insist their unsubstantiated conclusions that lie in direct opposition to the findings of the California Supreme Court, are conclusions the City Council should consider in approving the Highrose El Porto project?

CEQA Guidelines require the Lead Agency incorporate environmental considerations into the project conceptualization, design, and planning at the earliest feasible time (14 CCR § 15004(3))[13]. When a public agency is entering into preliminary agreements regarding a project prior to approval, the agency shall not commit the agency to the project; for example, an agency shall not grant any vested development entitlements

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[9] Ibid.
[10] Ibid.
[11] Ibid., p. 2.
[12] *See* attached *California Building Industry Association,* v. *Bay Area Air Quality Management District* (2015) 62 Cal4th 369, 196 Cal.Rptr.3d 94, 362 P.3d 792.
[13] *See* attached CEQA Guideline 14 CCR § 15004, *Time of Preparation.*

prior to compliance with CEQA. Any such pre-approval agreement should A) Condition the agreement on compliance with CEQA; B) not bind any party, or commit to any definite course of action, prior to CEQA compliance; C) Not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the 'no project' alternative; and D) Not restrict the lead agency from denying the project (14 CCR § 15004(4)(A-D))[14]. Despite these CEQA requirements, the Lead Agency invoked an unspecified statutory CEQA exemption at the earliest possible time and without making any mandatory findings of significance, and without any authority to invoke an unspecified statutory exemption. Why did the Lead Agency invoke an unspecified statutory exemption from CEQA review for a 'Ministerial Approval Process' associated with density bonus entitlements?

CEQA Guidelines also require a lead agency to find that a project *may* have a significant effect on the environment if the project 1) has the potential to achieve short-term environmental goals [increased housing that gets homeless people off the street] to the disadvantage of long-term environmental goals [overpopulation causing gridlock and higher greenhouse gasses] (14 CCR § 15065(a)(2))[15]; 2) incremental effects of an individual project are significant when viewed in connection with the effects of probable future projects [continued development in the overly dense coastal zone, including the undergrounding of utilities] (14 CCR § 15065(a)(3))[16]; and, 3) the environmental effects of a project will cause substantial adverse effects on human beings [exposure to chemical compounds from the adjacent Chevron refinery that are located in the ground, on the surface or in the air], either directly or indirectly (14 CCR § 15065(a)(4)[17]. Chevron monitors 14 different chemical compounds with their open-path fence-line monitors at the El Segundo Oil Refinery[18]. Did the Lead Agency understand invoking an unspecified statutory exemption would undermine, circumvent and violate the mandatory findings of significance required by CEQA?

CEQA Guidelines also require consideration and discussion of significant environmental impacts [emergency response, health risk mitigation, congestion management, evacuation routes, greenhouse gases, safety protocols]; the EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected [underground accumulation of chemical compounds, risk of spills from above ground oil storage tanks, overburdened roadways incapable of providing egress in the event of an emergency, calculation of VMT to mitigate GHG] (14 CCR § 15126.2(a))[19]; increases in the population may tax existing community service facilities, requiring construction

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[14] Ibid.
[15] *See* attached CEQA Guideline 14 CCR § 15065, *Mandatory Findings of Significance.*
[16] Ibid.
[17] Ibid.
[18] See attached *List of Chemical Compounds* monitored by Chevron at the El Segundo Oil Refinery.
[19] *See* attached CEQA Guideline 14 CCR § 15126.2, *Consideration and Discussion of Significant Environmental Impacts.*

of new facilities that could cause significant environmental effects [undergrounding utilities, expanding roadways and sidewalks, increasing housing density on land with environmental encumbrances] (14 CCR § 15126.2(e))[20].

If the City invokes the specific *Affordable Housing* statutory exemption pursuant to 14 CCR § 15194[21], the project is required to be consistent with the General Plan and the LCP (14 CCR § 15192(a)(1))[22]. The City's LCP requires the Lead Agency to find the proposal is consistent with both the General Plan and the LCP (LCP A.84.060(C)(1)[23]; and reasonable conditions be imposed on an Applicant for a PDP, to make required findings (LCP A.84.070(A))[24]. Other threshold criteria require the *Affordable Housing* statutory exemption include, 1) the project would be subject to a *Preliminary Endangerment Assessment* to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity (14 CCR § 15192(f)[25]; 2) the project does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties (14 CCR § 15192(i))[26]; 3) the project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency (14 CCR § 15192(j)[27].

If the City invokes the general *Ministerial Projects* statutory exemption pursuant to 14 CCR § 15268[28], the City's implementing regulations or ordinances should provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances (14 CCR § 15268(c))[29], and where the project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA (14 CCR § 15268(d))[30]. The Highrose El Porto project includes various and multiple discretionary decisions that no honest review can deny. "In resolving the conflict on intent, as we must, we conclude that the Legislature intended the EQA to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. We also conclude that to achieve that maximum protection the Legislature necessarily intended to include within the operation of the act, private activities for which a government permit or other entitlement for use is necessary. (*Friends of Mammoth* v.

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[20] Ibid.
[21] *See* attached CEQA Guideline 14 CCR § 15194, *Affordable Housing Exemption.*
[22] *See* attached CEQA Guideline 14 CCR § 15192, *Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.*
[23] *See* attached LCP § A.84.060(C)(1).
[24] *See* attached LCP § A.84.070(A).
[25] Ibid. 22.
[26] Ibid. 22, p. 2.
[27] Ibid. 22, p. 2.
[28] *See* attached CEQA Guideline 14 CCR § 15268, *Ministerial Projects.*
[29] Ibid.
[30] Ibid.

*Board of Supervisors (1972)* 8 Cal.3d 247, 259 [104 Cal.Rptr. 761], 502 P.2d 1049.)[31] "A project of mixed ministerial-discretionary character, as was the grading permit here, should be treated as a discretionary project." As was said in *People* v. *Department of Housing and Community Development,* 45 Cal. App.3d 185, 194 [119 Cal.Rptr. 266].

The Public Resources Code requires benefits or negative impacts be based on substantial evidence in light of the whole record (Pub. Res. Code, § 21082.4)[32]. The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of CEQA Guidelines by public agencies (Pub. Res. Code, § 21083(a))[33]. The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project *may* have a significant effect on the environment and require a finding that a project may have a significant effect (Pub. Res. Code, § 21083(b))[34] if the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly (Pub. Res. Code, § 21083(b)(3))[35]. "In this connection we stress that the Legislature has mandated an environmental impact report not only when a proposed project *will* have a significant environmental effect, but also when it 'may' (§§ 21101, 21150, 21151) or 'could' (§§ 21100, 21102) have such an effect."[36]

A housing project qualifies for an exemption from CEQA pursuant to Section 21159.23(a)(2)(A)[37] (*Affordable Housing* statutory exemption) if it meets the criteria established in Public Resources Code § 21159.23 (Pub. Res. Code, § 21159.21)[38] and is consistent with the applicable general plan, specific plan, and local coastal program (Pub. Res. Code, § 21159.21(a))[39]; Community-level environmental review has been adopted or certified (Pub. Res. Code, § 21159.21(b))[40]; the site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code (Pub. Res. Code, § 21159.21(e))[41]; the site of the project is subject to a *Preliminary Endangerment Assessment* to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards *from any nearby property or activity* (Pub. Res. Code, § 21159.21(f))[42], and, if a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated (Pub. Res. Code, § 21159.21(f)(1))[43], and if a potential for

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[31] See *Friends of Mammoth* v. *Board of Supervisors (1972)* 8 Cal.3d 247, 104 Cal.Rptr. 761, 502 P.2d 1049.
[32] *See* attached Public Resources Code § 21082.4.
[33] *See* attached Public Resources Code § 21083.
[34] Ibid.
[35] Ibid.
[36] Ibid., 31, p. 271.
[37] *See* attached Public Resources Code § 21159.23.
[38] *See* attached Public Resources Code § 21159.21.
[39] Ibid.
[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] Ibid.

exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated (Pub. Res. Code, § 21159.21(f)(2))[44]; the project site is not subject to an unusually high risk of fire or explosion from materials stored or used on nearby properties (Pub. Res. Code, § 21159.21(h)(2))[45]; the project site is not subject to risk of a public health exposure at a level that would exceed the standards established by any state or federal agency (Pub. Res. Code, § 21159.21(h)(3))[46].

In December 2018, the Office of Planning and Research issued a Technical Advisory on evaluating transportation impacts in CEQA. Senate Bill 743 was codified in Public Resources Code 21099 requiring changes to CEQA regarding the analysis of transportation impacts. The criteria for determining the significant impacts must "promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses." (CEQA Guidelines § 15064.3(b))[47]. The OPR has proposed and the California Natural Resources Agency has certified and adopted changes to the CEQA Guidelines that identify vehicle miles traveled as the most appropriate metric to evaluate a project's transportation impacts. With the certification of these changes, *automobile delay* as measured by "level of service" and other similar metrics, no longer constitutes a significant effect under CEQA (Pub. Res. Code, § 21099(b)(3))[48]. To achieve the State's long-term climate goals, California needs to reduce per capita VMT. This can occur under CEQA through VMT mitigation. Without early VMT mitigation, the state may follow a path that meets Greenhouse Gas emission targets in the early years, but finds itself poorly positioned to meet more stringent targets later. Employing VMT as the metric of transportation impact statewide will help to ensure GHG reductions planned under SB 375 will be achieved through on-the-ground development. VMT mitigation also creates substantial benefits characterized as "co-benefits" to GHG reduction in both the near-term and the long-term. Increases in VMT also impact human health and the natural environment.

Please reverse your preliminary decision to approve the Highrose Project, remand the project for proper CEQA review, and upon completion of appropriate and satisfactory CEQA compliance, reinstate your preliminary approval in its final form, if and only if the findings support that decision. Otherwise, protect our community from the risks and dangers of environmental harms that have yet to be identified and mitigated.

Respectfully submitted,

Patrick Sharpless

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[44] Ibid., p. 2.
[45] Ibid., p. 2.
[46] Ibid., p. 2.
[47] *See* attached CEQA Guideline 14 CCR § 15064.3, *Determining the Significance of Transportation Impacts.*
[48] *See* attached Public Resources Code § 21099, *Modernization of Transportation Analysis.*

# LIST OF ATTACHMENTS

1. Gov. Code § 65917
2. Gov. Code § 65915(d)(1) and § 65915(e)(1)
3. *Housing Accountability Act, Gov. Code* § 65589.5(e)
4. HCD, *Streamlined Ministerial Approval Process Guidelines* (March 30, 2021)
5. HCD, Technical Advisory, *Appendix A*, (September 15, 2020)
6. CEQA Guideline 14 CCR § 15183, *Projects Consistent with a Community Plan, General Plan, or Zoning*
7. *California Building Industry Association,* v. *Bay Area Air Quality Management District* (2015) 62 Cal4th 369, 196 Cal.Rptr.3d 94, 362 P.3d 792
8. CEQA Guideline 14 CCR § 15004, *Time of Preparation*
9. CEQA Guideline 14 CCR § 15065, *Mandatory Findings of Significance*
10. *List of Chemical Compounds* monitored by Chevron at the El Segundo Oil Refinery
11. CEQA Guideline 14 CCR § 15126.2, *Consideration and Discussion of Significant Environmental Impacts*
12. CEQA Guideline 14 CCR § 15194, *Affordable Housing Exemption*
13. CEQA Guideline 14 CCR § 15192, *Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects*
14. LCP § A.84.060(C)(1)
15. LCP § A.84.070(A)
16. CEQA Guideline 14 CCR § 15268, *Ministerial Projects*
17. *Friends of Mammoth* v. *Board of Supervisors (1972)* 8 Cal.3d 247, 104 Cal.Rptr. 761, 502 P.2d 1049
18. Public Resources Code § 21082.4
19. Public Resources Code § 21083
20. Public Resources Code § 21159.23
21. Public Resources Code § 21159.21
22. CEQA Guideline 14 CCR § 15064.3, *Determining the Significance of Transportation Impacts*
23. Public Resources Code § 21099, *Modernization of Transportation Analysis*

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

**State of California**

**GOVERNMENT CODE**

**Section 65917**

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65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

(Amended by Stats. 2001, Ch. 115, Sec. 14. Effective January 1, 2002.)

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

**State of California**

**GOVERNMENT CODE**

**Section 65915**

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65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Except as otherwise provided in subdivision (s), failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development standards pursuant to subdivision (e), whether the applicant has provided adequate information for the local government to make a determination as to those incentives, concessions, or waivers or reductions of development standards.

(E) Subparagraph (A) does not apply to an applicant seeking a density bonus for a proposed housing development if the applicant's application was submitted to, or processed by, a city, county, or city and county before January 1, 2015.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a development in which the units are for sale.

(B) Two incentives or concessions for projects that include at least 17 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a development in which the units are for sale.

(C) Three incentives or concessions for projects that include at least 24 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a development in which the units are for sale.

(D) Four incentives or concessions for a project meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b). If the project is located within one-half mile of a major transit stop or is located in a very low vehicle travel area in a designated county, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(E) One incentive or concession for projects that include at least 20 percent of the total units for lower income students in a student housing development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is

in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subdivision shall not be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section that shall include legislative body approval of the means of compliance with this section.

(4) The city, county, or city and county shall bear the burden of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. Subject to paragraph (3), an applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subdivision shall not be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(3) A housing development that receives a waiver from any maximum controls on density pursuant to clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f) shall only be eligible for a waiver or reduction of development standards as provided in subparagraph (D) of paragraph (2) of subdivision (d) and clause (ii) of subparagraph (D) of paragraph (3) of subdivision (f), unless the city, county, or city and county agrees to additional waivers or reductions of development standards.

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

**State of California**

**GOVERNMENT CODE**

**Section 65589.5**

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65589.5. (a) (1) The Legislature finds and declares all of the following:

(A) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(B) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(C) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(D) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(2) In enacting the amendments made to this section by the act adding this paragraph, the Legislature further finds and declares the following:

(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.

(C) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.

(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.

by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal

Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) Except as provided in subdivision (o), nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the housing development project or emergency shelter.

(4) For purposes of this section, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.

(C) Transitional housing or supportive housing.

# Updated Streamlined Ministerial Approval Process

## Government Code Section 65913.4

# Guidelines

**State of California**
**Governor Gavin Newsom**

**Lourdes M. Castro Ramírez, Secretary**
**Business, Consumer Services and Housing Agency**

**Gustavo Velasquez, Director**
**California Department of Housing and Community Development**

**Megan Kirkeby, Deputy Director**
**Division of Housing Policy Development**

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Originally issued November 29, 2018
March 30, 2021

## ARTICLE I. GENERAL PROVISIONS

### Section 100. Purpose and Scope

(a) These Guidelines (hereinafter "Guidelines") implement, interpret, and make specific the Chapter 366, Statutes of 2017 (SB 35, Wiener), and subsequent amendments (hereinafter "Streamlined Ministerial Approval Process") as authorized by Government Code section 65913.4.

(b) These Guidelines establish terms, conditions, and procedures for a development proponent to submit an application for a development to a locality that is subject to the Streamlined Ministerial Approval Process provided by Government Code section 65913.4. Nothing in these Guidelines relieves a local government from the obligation to follow state law relating to the availability of the Streamlined Ministerial Approval Process.

(c) It is the intent of the Legislature to provide reforms and incentives to facilitate and expedite the construction of affordable housing. Therefore, these Guidelines shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of increasing housing supply.

(d) These Guidelines shall remain in effect until January 1, 2026, and as of that date are repealed.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65582.1 and 65913.4(n) and (o).

### Section 101. Applicability

(a) The provisions of Government Code section 65913.4 are effective as of January 1, 2018.

(b) These Guidelines are applicable to applications submitted on or after January 1, 2019, including applications submitted for modification to a development per Section 301(c). Subsequent updates to the Guidelines are applicable to applications submitted on or after the date adopted as shown on the cover page. Nothing in these Guidelines may be used to invalidate or require a modification to a development approved through the Streamlined Ministerial Approval Process prior to the effective date.

(c) These Guidelines are applicable to counties and cities, including both general law and charter cities, including a charter city and county.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(k)(6).

### Section 102. Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meaning of terms described in Government Code section 65913.4

(a) "Annual Progress Report (APR)" means the housing element Annual Progress Report required by Government Code section 65400, and due to the Department April 1 of each year, reporting on the prior calendar year's permitting activities and implementation of the programs in a local government's housing element.

(b) "Application" means a submission requesting Streamlined Ministerial Approval pursuant to Government Code section 65913.4 and these Guidelines, which contains information pursuant to Section 300(b) describing the development's compliance with the criteria outlined in Article IV of these Guidelines.

(c) "Area Median Income (AMI)" means the median family income of a geographic area of the state, as determined annually by the Department within the state income limits: http://www.hcd.ca.gov/grants-funding/income-limits/index.shtml.

(d) "Car share vehicle" is an automobile rental model where people rent cars from a car-sharing network, or an exclusive car provided by the project, to be located in a designated area within the project, for roundtrip or one-way, where vehicles are returned to a dedicated or reserved parking location. An example of such a service is Zipcar or car(s) provided by the project. If the project provides an exclusive car, it shall do so at a ratio of at least one car per every 50 units.

(e) "Density Bonus" has the same meaning as set forth in Government Code section 65915.

(f) "Department" means the California Department of Housing and Community Development.

(g) "Determination" means the published identification, periodically updated, by the Department of those local governments that are required to make the Streamlined Ministerial Approval Process available per these Guidelines.

(h) "Development proponent" or "applicant" means the owner of the property, or person or entity with the written authority of the owner, that submits an application for streamlined approval.

(i) "Fifth housing element planning period" means the five or eight-year time period between the due date for the fifth revision of the housing element and the due date for the sixth revision of the housing element pursuant to Government Code section 65588(f).

(j) "Infill" means at least 75 percent of the linear measurement of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this definition, parcels that are only separated by a street or highway shall be considered to be adjoined.

(k) "Locality" or "local government" means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.

(l) "Low-income" means households earning 50 to 80 percent of AMI.

(m) "Lower-income" means households earning 80 percent or less of AMI pursuant to Health and Safety Code section 50079.5.

(n) "Ministerial processing" or "ministerial approval" means a process for development approval involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely ensures that the proposed development meets all the "objective zoning standards," "objective subdivision standards," and "objective design review standards" in effect at the time that the application is submitted to the local government, but uses no special discretion or judgment in reaching a decision.

## Section 301. Development Review and Approval

(a) Ministerial processing

(1) Ministerial approval, as defined in Section 102(n), of a project that complies with Article IV of these Guidelines shall be non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval.

(2) Ministerial design review or public oversight of the application, if any is conducted, may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate.

(A) Design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local government before submission of the development application, and shall be broadly applicable to development within the locality.

(B) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards, it shall provide the development proponent, as defined in Section 102(h), written documentation in support of its denial identifying with specificity the standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, within the timeframe specified in Section 301(b)(2) below. If the application can be brought into compliance with minor changes to the proposal, the local government may, in lieu of making the detailed findings referenced above, allow the development proponent to correct any deficiencies within the timeframes for determining project consistency specified in Section 301(b)(4) below.

(C) When determining consistency, a local government shall find that a development is consistent with the objective planning standards if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective standards. The local government may only find that a development is inconsistent with one or more objective planning standards, if the local government finds no substantial evidence in favor of consistency and that, based on the entire record, no reasonable person could conclude that the development is consistent with the objective standards.

(3) A determination of inconsistency with objective planning standards in Section 301(b)(3)(A) does not preclude the development proponent from correcting any deficiencies and resubmitting an application for streamlined review, or from applying for the project under other local government processes. If the development proponent elects to resubmit its application for streamlined review under that Section, the timeframes specified in Section 301(b) below shall commence on the date of resubmittal.

(4) Approval of ministerial processing does not preclude imposing standard conditions of approval as long as those conditions are objective and broadly applicable to development within the locality, regardless of streamlined approval, and such conditions implement objective standards that had been adopted prior to submission of a development application. This includes any objective process requirements related to the issuance of a building permit. However, any further approvals, such as demolition, grading and building permits or, if required, final map, shall be issued on a ministerial basis subject to the objective standards.

(A) Notwithstanding Paragraph (5), standard conditions that specifically implement the provisions of these Guidelines, such as commitment for recording covenant and restrictions and provision of prevailing wage, may be included in the conditions of approval.

(5) The California Environmental Quality Act (Division 13 (commencing with section 21000) of the Public Resources Code) does not apply to the following in connection with projects qualifying for the Streamlined Ministerial Approval Process:

(A) Actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to lease, convey, or encumber land or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible transit oriented development project, as defined pursuant to section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease.

(B) Actions taken by a state agency or local government to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income.

(C) Approval of improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section where such development is to be used for housing for persons and families of very low, low, or moderate income, as defined in section 50093 of the Health and Safety Code.

(D) The determination of whether an application for a development is subject to the Streamlined Ministerial Approval Process.

(b) Upon a receipt of an application, the local government shall adhere to the following:

(1) An application submitted hereunder shall be reviewed by the agency within the timeframes required under paragraph (2) below whether or not it contains all materials required by the agency for the proposed project, and it is not a basis to deny the project if either:

(A) The application contains sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards (outlined in Article IV of these Guidelines); or

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

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**September 15, 2020**

**MEMORANDUM FOR:** Planning Directors and Interested Parties

**FROM:** Megan Kirkeby, Deputy Director
Division of Housing Policy Development

**SUBJECT:** **Housing Accountability Act Technical Assistance Advisory (Government Code Section 65589.5)**

The Housing Accountability Act (HAA), Government Code section 65589.5, establishes limitations to a local government's ability to deny, reduce the density of, or make infeasible housing development projects, emergency shelters, or farmworker housing that are consistent with objective local development standards and contribute to meeting housing need. The Legislature first enacted the HAA in 1982 and recently amended the HAA to expand and strengthen its provisions as part of the overall recognition of the critically low volumes of housing stock in California. In amending the HAA, the Legislature made repeated findings that the lack of housing and the lack of affordable housing, is a critical problem that threatens the economic, environmental, and social quality of life in California. This Technical Assistance Advisory provides guidance on implementation of the HAA, including the following amendments.

Chapter 368, Statutes of 2017 (Senate Bill 167), Chapter 373, Statutes of 2017 (Assembly Bill 678) - Strengthens the HAA by increasing the documentation necessary and the standard of proof required for a local agency to legally defend its denial of low-to-moderate-income housing development projects, and requiring courts to impose a fine of $10,000 or more per unit on local agencies that fail to legally defend their rejection of an affordable housing development project.

Chapter 378, Statutes of 2017 (Assembly Bill 1515) – Establishes a reasonable person standard for determining conformance with local land use requirements.

Chapter 243, Statutes of 2018 (Assembly Bill 3194) -Expands the meaning of zoning consistency to include projects that are consistent with general plan designations but not zoning designation on a site if that zone is inconsistent with the general plan.

Chapter 654, Statutes of 2019 (Senate Bill 330) - Defined previously undefined terms such as objective standards and complete application and set forth vesting rights for projects that use a new pre-application process. Most of these provisions sunset on January 1, 2025, unless extended by the Legislature and Governor.

If you have any questions, or would like additional information or technical assistance, please contact the Division of Housing Policy Development at (916) 263-2911.

# APPENDIX A: Frequently Asked Questions

### What types of housing development project applications are subject to the Housing Accountability Act (HAA)?

The HAA applies to both market rate and affordable housing development projects. (*Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1073.) It applies to housing development projects that consist of residential units and mixed-use developments when two-thirds or more of the square footage is designated for residential use. It also applies to transitional housing, supportive housing, farmworker housing, and emergency shelters. (Gov. Code, § 65589.5, subds. (d) and (h)(2).)

### Does the Housing Accountability Act apply to charter cities?

Yes, the HAA applies to charter cities (Gov. Code, § 65589.5, subd. (g).)

### Does the Housing Accountability Act apply to housing development projects in coastal zones?

Yes. However, local governments must still comply with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code) (Gov. Code, § 65589.5, subd. (e).)

### Are housing developments still subject to the California Environmental Quality Act (CEQA) if they qualify for the protections under the Housing Accountability Act?

Yes. Jurisdictions are still required to comply with CEQA (Division 13 (commencing with Section 21000) of the Public Resources Code) as applicable to the project. (Gov. Code, § 65589.5, subd. (e).)

### Does the California Department of Housing and Community Development have enforcement authority for the Housing Accountability Act?

Yes. HCD has authority to find that a local government's actions do not substantially comply with the HAA (Gov. Code, § 65585, subd. (j)(1).) In such a case, HCD may notify the California State Attorney General's Office that a local government has taken action in violation of the HAA.

### If approval of a housing development project triggers the No-Net Loss Law, may a local government disapprove the project?

No. Triggering a required action under the No-Net Loss Law is not a valid basis to disapprove a housing development project. (Gov. Code, § 65863, subd. (c)(2).) The only valid reasons for disapproving a housing development project are defined in the HAA under subdivisions (d) and (j). Subdivision (j) contains requirements that apply to all housing development projects; subdivision (d) contains additional requirements for housing development projects for very low-, low- or moderate-income households or emergency shelters.

### Does the Housing Accountability Act apply to a residential development project on an historic property?

Yes. The HAA does not limit the applicability of its provisions based on individual site characteristics or criteria. The local government may apply objective, quantifiable, written development standards, conditions, and policies related to historic preservation to the housing development project, so long as they were in effect when the application was deemed

THOMSON REUTERS
WESTLAW California Code of Regulations



**§ 15183. Projects Consistent with a Community Plan, General Plan, or Zoning.**
14 CA ADC § 15183
Barclays Official California Code of Regulations

Barclays California Code of Regulations
Title 14. Natural Resources
Division 6. Resources Agency
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act (Refs & Annos)
Article 12. Special Situations

14 CCR § 15183

# § 15183. Projects Consistent with a Community Plan, General Plan, or Zoning.

Currentness

(a) CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

(b) In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

(1) Are peculiar to the project or the parcel on which the project would be located,

(2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,

(3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or

(4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(c) If an impact is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact.

(d) This section shall apply only to projects which meet the following conditions:

(1) The project is consistent with:

(A) A community plan adopted as part of a general plan,

(B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or

(C) A general plan of a local agency, and

(2) An EIR was certified by the lead agency for the zoning action, the community plan, or the general plan.

(e) This section shall limit the analysis of only those significant environmental effects for which:

(1) Each public agency with authority to mitigate any of the significant effects on the environment identified in the EIR on the planning or zoning action undertakes or requires others to undertake mitigation measures specified in the EIR which the lead agency found to be feasible, and

(2) The lead agency makes a finding at a public hearing as to whether the feasible mitigation measures will be undertaken.

(f) An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR. Such development policies or standards need not apply throughout the entire city or county, but can apply only within the zoning district in which the project is located, or within the area subject to the community plan on which the lead agency is relying. Moreover, such policies or standards need not be part of the general plan or any community plan, but can be found within another pertinent planning document such as a zoning ordinance. Where a city or county, in previously adopting uniformly applied development policies or standards for imposition on future projects, failed to make a finding as to whether such policies or standards would substantially mitigate the effects of future projects, the decisionmaking body of the city or county, prior to approving such a future project pursuant to this section, may hold a public hearing for the purpose of considering whether, as applied to the project, such standards or policies would substantially mitigate the effects of the project. Such a public hearing need only be held if the city or county decides to apply the standards or policies as permitted in this section.

(g) Examples of uniformly applied development policies or standards include, but are not limited to:

(1) Parking ordinances,

(2) Public access requirements,

(3) Grading ordinances.

(4) Hillside development ordinances.

(5) Flood plain ordinances.

(6) Habitat protection or conservation ordinances.

(7) View protection ordinances.

(8) Requirements for reducing greenhouse gas emissions, as set forth in adopted land use plans, policies, or regulations.

(h) An environmental effect shall not be considered peculiar to the project or parcel solely because no uniformly applied development policy or standard is applicable to it.

(i) Where the prior EIR relied upon by the lead agency was prepared for a general plan or community plan that meets the requirements of this section, any rezoning action consistent with the general plan or community plan shall be treated as a project subject to this section.

(1) "Community plan" is defined as a part of the general plan of a city or county which applies to a defined geographic portion of the total area included in the general plan, includes or references each of the mandatory elements specified in Section 65302 of the Government Code, and contains specific development policies and implementation measures which will apply those policies to each involved parcel.

(2) For purposes of this section, "consistent" means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

(j) This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

## Credits

NOTE: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21083.05 and 21083.3, Public Resources Code.

HISTORY

1. Amendment of section heading and subsections (a)(2) and (b) filed 1-30-86; effective thirtieth day thereafter (Register 86, No. 5).

2. Amendment of section heading and section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

3. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

4. New subsection (g)(8) and amendment of NOTE filed 2-16-2010; operative 3-18-2010 (Register 2010, No. 8).

This database is current through 1/20/23 Register 2023, No. 3.

Cal. Admin. Code tit. 14, § 15183, 14 CA ADC § 15183

END OF DOCUMENT

62 Cal.4th 369 (2015)
196 Cal.Rptr.3d 94
362 P.3d 792

# CALIFORNIA BUILDING INDUSTRY ASSOCIATION, Plaintiff and Respondent,

v.

# BAY AREA AIR QUALITY MANAGEMENT DISTRICT, Defendant and Appellant.

No. S213478.

**Supreme Court of California.**

December 17, 2015.

376 *376 Appeal from the Superior Court of Alameda County, Super. Ct. No. RG10548693, Frank Roesch, Judge. Ct.App. 1/5, A135335, A136212. Review Granted 218 Cal.App.4th 1171.

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Earthjustice and Adriano L. Martinez for Communities for a Better Environment as Amicus Curiae on behalf of Defendant and Appellant.

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Council, Bay Planning Coalition, East Bay Leadership Council, Orange County Business Council, San Mateo County Economic Development Association and Silicon Valley Leadership Group as Amici Curiae on behalf of Plaintiff and Respondent.

Miller Starr Regalia, Arthur F. Coon and Matthew C. Henderson for League of California Cities, County of Tulare, County of Kings and County of Solano as Amici Curiae.

# OPINION

CUÉLLAR, J.—

We granted review to address the following question: Under what circumstances, if any, does the California Environmental Quality Act (CEQA) (Pub. Resources Code,[1] § 21000 et seq.) require an analysis of how existing environmental conditions will impact future residents or users of a proposed project?

In light of CEQA's text, statutory structure, and purpose, we conclude that agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents. But when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the *project's* impact on the environment — and not the *environment's* impact on the project — that compels an evaluation of how future residents or users
378 *378 could be affected by exacerbated conditions. Our reading is consistent with certain portions of administrative guidelines issued by the Natural Resources Agency (Resources Agency), to whom we owe a measure of deference in a case such as this one.

Moreover, special CEQA requirements apply to certain airport, school, and housing construction projects. In such situations, CEQA requires agencies to evaluate a project site's environmental conditions regardless of whether the project risks exacerbating existing conditions. The environmental review must take into account — and a negative declaration or exemption cannot issue without considering — how existing environmental risks such as noise, hazardous waste, or wild land fire hazard will impact future residents or users of a project. That these exceptions exist, however, does not alter our conclusion that ordinary CEQA analysis is concerned with a project's impact on the environment, rather than with the environment's impact on a project and its users or residents.

Accordingly, we hold that CEQA does not require an agency to consider the impact of existing conditions on future project users except in the aforementioned circumstances. We reverse the Court of Appeal's judgment and remand for proceedings consistent with our decision.

# I. BACKGROUND

The Bay Area Air Quality Management District (District) is a regional agency authorized to adopt and enforce regulations governing air pollutants from stationary sources such as factories, refineries, power plants, and gas stations in the San Francisco Bay Area. The District's purpose is to achieve and

maintain compliance, in its regional jurisdiction, with state and federal ambient air quality standards. (Health & Saf. Code, §§ 39002, 40000, 40001, subd. (a), 40200.)[2] To fulfill this purpose, the District monitors air quality, issues permits to certain emitters of air pollution, and promulgates rules to control emissions. (*Id.*, §§ 40001, 42300, 42301.5, 42315.)

The Resources Agency, meanwhile, is the agency with primary responsibility for statewide implementation of CEQA. It carries out this task in part by adopting administrative guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.)[3] that call for other agencies subject to CEQA, such as the District, to develop "thresholds of significance" for determining "the significance of environmental effects." (Guidelines, § 15064.7, subd. (a).) In 1999, the District published *379 thresholds of significance for certain air pollutants, along with its own regional guidelines concerning the use of the thresholds and CEQA air quality issues in general, in order to guide those preparing or evaluating air quality impact analyses for projects in the San Francisco Bay Area. The thresholds set levels at which toxic air contaminants (TACs) and certain types of particulate matter would be deemed environmentally significant.

A decade later, in 2009, the District drafted new proposed thresholds of significance partly in response to the Legislature's adoption of laws addressing greenhouse gases (GHGs).[4] The District cited three factors to justify the new thresholds: (1) the existence of more stringent state and federal air quality standards that took effect after the District adopted its earlier thresholds, (2) the discovery that TACs present a greater health risk than previously thought, and (3) growing concerns over global climate change. A number of organizations, businesses, and local governments participated in public hearings, meetings, and workshops held by the District regarding the proposed revisions. One such participant was the California Building Industry Association (CBIA), a statewide trade association representing homebuilders, architects, trade contractors, engineers, designers, and other building industry professionals.

During the public hearing process, CBIA expressed concern that the District's proposed thresholds and guidelines were too stringent and would make it difficult to complete urban infill projects located near existing sources of air pollution.[5] CBIA claimed the proposed thresholds would require environmental impact reports (EIRs) for many more projects than before, and would result in nonapproval of other projects. If these infill projects were not feasible, CBIA argued, development would occur in more suburban areas and result in even more pollution from automobile commuter traffic.

The District was not persuaded. In June 2010, the District's board of directors passed resolution No. 2010-06, adopting new thresholds of significance for air pollutants, including the TAC "receptor thresholds" and thresholds for GHGs and PM2.5 (particulate matter with a diameter of 2.5 microns or less). The District also published new CEQA air quality guidelines, which include the new thresholds and suggest methods of assessing and mitigating *380 impacts found to be significant. (District, Cal. Environmental Quality Act: Air Quality Guidelines (June 2010).)

CBIA filed a petition for writ of mandate challenging these thresholds. (Code Civ. Proc., § 1085.) After rejecting CBIA's contentions that state law preempts the thresholds, the superior court conducted a hearing on the merits of the following claims: (1) the District should have conducted a CEQA review of

the thresholds before their promulgation because they constitute a "project" within the meaning of CEQA; (2) the TAC/PM2.5 risks and hazards thresholds are arbitrary and capricious to the extent they unlawfully require an evaluation of the impacts the environment would have on a given project; (3) aspects of the thresholds are not based on substantial evidence; and (4) the thresholds fail the "rational basis" test because sufficient evidence does not exist for their approval.

The superior court determined that the District's promulgation of the 2010 thresholds was indeed a "project" under CEQA, and that the District was therefore bound to evaluate the thresholds' potential impact on the environment. Because the District issued the thresholds without the required CEQA review, the court entered judgment in favor of CBIA without addressing CBIA's other arguments. The court then issued a writ of mandate directing the District to set aside its approval of the thresholds, without addressing CBIA's claim that the District's TAC/PM2.5 thresholds were arbitrary and capricious because they required an analysis of how a project would impact future residents or users. The court also awarded CBIA attorney fees under Code of Civil Procedure section 1021.5.

The Court of Appeal reversed. In ordering the superior court to vacate its writ of mandate, the Court of Appeal concluded, among other things, that the District's promulgation of the 2010 thresholds was not a project subject to CEQA review. It also rejected CBIA's various challenges to the substance of the thresholds, including its challenge to the validity of the receptor thresholds — the thresholds for "new receptors" consisting of residents and workers who will be brought into the area as a result of a proposed project. CBIA had argued the receptor thresholds are invalid because CEQA does not require analysis of the impacts that existing hazardous conditions will have on a new project's occupants. The Court of Appeal more narrowly determined that the receptor thresholds have valid applications irrespective of whether CEQA requires an analysis of how existing environmental conditions impact a project's future residents or users, and therefore are "not invalid on their face." Finding that CBIA was "no longer a successful party," the Court of Appeal reversed the trial court's award of attorney fees and awarded the District its ordinary costs on appeal.

381 *381 We then granted CBIA's petition for review, but limited the scope of our review to the following question: Under what circumstances, if any, does CEQA require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?[6]

# II. DISCUSSION

As this case turns on our interpretation of CEQA statutory provisions implemented through the Resources Agency's Guidelines, it is helpful at the outset to clarify the scope of our analysis before turning to the relevant statutory and Guidelines provisions. We review the Court of Appeal's interpretation of the statute de novo. (*Abatti v. Imperial Irrigation Dist.* (2012) 205 Cal.App.4th 650, 668 [140 Cal.Rptr.3d 647].) Our goal in interpreting CEQA is to adopt the construction that best gives effect to the Legislature's intended purpose. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 45 [105 Cal.Rptr.3d 181, 224 P.3d 920] (*Committee for Green Foothills*).) Consistent with that purpose, we interpret CEQA to afford the most thorough possible protection to the environment that fits reasonably within the scope of its text. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 [253 Cal.Rptr. 426,

764 P.2d 278].)

In construing the statute, we also consider the interpretation of the agency charged with its implementation. Even in the absence of quasi-legislative regulations,[7] we take into account the agency's interpretation when we independently construe the statute, and afford the agency's interpretation the deference that is appropriate under the circumstances. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7 [78 Cal.Rptr.2d 1, 960 P.2d 1031] (*Yamaha*).) In deciding how much weight to give the agency's interpretation, we consider the agency's specialized knowledge and expertise — especially relevant where the statute at issue is a complex, technical one — and whether the agency adopted the interpretation pursuant to the Administrative Procedure Act. (Gov. Code, § 11340 et seq.; *Yamaha,* at pp. 12-13.) Whether the Guidelines are binding or merely reflect the Resources Agency's interpretation of the statute, we should afford great weight to the Guidelines when interpreting CEQA, unless a provision is clearly unauthorized or erroneous under the statute. (*Committee for Green Foothills, supra,* 48 Cal.4th at p. 48, fn. 12.)

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## *382 A. *General Overview of CEQA*

CEQA was enacted to advance four related purposes: to (1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, environmental damage; (3) prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly impact the environment. (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285-286 [142 Cal.Rptr.3d 539, 278 P.3d 803] (*Tomlinson*).)

To further these goals, CEQA requires that agencies follow a three-step process when planning an activity that could fall within its scope. (*Tomlinson, supra,* 54 Cal.4th at p. 286; see Guidelines, § 15002, subd. (k).) First, the public agency must determine whether a proposed activity is a "[p]roject," i.e., an activity that is undertaken, supported, or approved by a public agency and that "may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (§ 21065.)

Second, if the proposed activity is a project, the agency must next decide whether the project is exempt from the CEQA review process under either a statutory exemption (see § 21080) or a categorical exemption set forth in the CEQA Guidelines (see § 21084, subd. (a); Guidelines, § 15300 et seq.). If the agency determines the project is not exempt, it must then decide whether the project may have a significant environmental effect. And where the project will not have such an effect, the agency "must `adopt a negative declaration to that effect.'" (*Tomlinson, supra,* 54 Cal.4th at p. 286, quoting § 21080, subd. (c); see Guidelines, § 15070.)[8]

Third, if the agency finds the project "may have a significant effect on the environment," it must prepare an EIR before approving the project. (§§ 21100, subd. (a), 21151, subd. (a), 21080, subd. (d), 21082.2, subd. (d).) Given the statute's text, and its purpose of informing the public about *potential* environmental consequences, it is quite clear that an EIR is required even if the project's ultimate effect on the environment is far from certain. (*Communities for a Better Environment v. California Resources Agency*

(2002) 103 Cal.App.4th 98, 110 [126 Cal.Rptr.2d 441] [EIR is required "`"whenever it can be *fairly argued* on the basis of substantial evidence that the project may have significant environmental impact,'" regardless of whether other substantial evidence supports the opposite conclusion"], disapproved on
383 another *383 ground in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109, fn. 3 [184 Cal.Rptr.3d 643, 343 P.3d 834].) Determining environmental significance "calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data." (Guidelines, § 15064, subd. (b).) The Guidelines encourage public agencies to develop and publish "thresholds of significance" (Guidelines, § 15064.7, subd. (a)), which generally promote predictability and efficiency when the agencies determine whether to prepare an EIR. (*Communities for a Better Environment,* at p. 111.)

When an agency prepares an EIR, it provides public officials and the general public with details about a proposed project's consequences. The EIR also lists the ways to potentially minimize any significant environmental effects, and presents alternatives to the project. (§ 21061; see § 21002.1, subd. (a).) By making this information available to decision makers and the public at a crucial moment when the merits of a project and its alternatives are under discussion, an EIR advances not only the goal of environmental protection but of informed self-government. (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1162 [77 Cal.Rptr.3d 578, 184 P.3d 709] [an EIR "give[s] the public and government agencies the information needed to make informed decisions, thus protecting `"not only the environment but also informed self-government"'"].)

The function CEQA assigns to an EIR, in fact, epitomizes the statute's focus on informed decisionmaking and self-government. The statute does not necessarily call for disapproval of a project having a significant environmental impact, nor does it require selection of the alternative "most protective of the environmental status quo." (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 695 [125 Cal.Rptr.2d 745].) Instead, when "economic, social, or other conditions" make alternatives and mitigation measures "infeasible," a project may be approved despite its significant environmental effects if the lead agency adopts a statement of overriding considerations and finds the benefits of the project outweigh the potential environmental damage. (§§ 21002, 21002.1, subd. (c); see Guidelines, § 15093; *City of Irvine v. County of Orange* (2013) 221 Cal.App.4th 846, 855 [164 Cal.Rptr.3d 586].)

## B. *Section 21083 and Guidelines Section 15126.2*

Reflecting the need for further elaboration of these requirements in implementation, CEQA entrusts to the Governor's Office of Planning and Research (OPR) the responsibility of drafting the aforementioned Guidelines. Once OPR completes this process, the Secretary of the Resources Agency may certify and
384 adopt the Guidelines in compliance with the Government *384 Code. (§ 21083, subds. (a), (e), (f); see Guidelines, § 15000 et seq.)[9] Section 21083 provides the Guidelines "shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with [CEQA]." (§ 21083, subd. (a).) The Guidelines therefore serve to make the CEQA process tractable for those who must administer it, those who must comply with it, and ultimately, those members of the public who must live with its consequences.

What the Guidelines are supposed to contain is also specified in section 21083. The Guidelines "shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a `significant effect on the environment.'" (§ 21083, subd. (b) (section 21083(b).) Most relevant is the provision's express command that *"[t]he criteria shall require a finding that a project may have a `significant effect on the environment' if one or more of"* a set of certain conditions exist. (*Ibid.,* italics added.) These conditions include a "proposed project['s] ... potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals" and circumstances where a project's "possible effects ... are individually limited but cumulatively considerable." (*Id.,* subd. (b)(1), (2).) Section 21083, subdivision (b)(2) defines "cumulatively considerable" as the "incremental effects of an individual project ... when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." The final condition listed under section 21083 is where "[t]he environmental effects of a project will *cause substantial adverse effects on human beings, either directly or indirectly.*" (§ 21083, subd. (b)(3), italics added (section 21083(b)(3)).)

Through these Guidelines, the Resources Agency gives public agencies a more concrete indication of how to comply with CEQA — including whether such agencies must determine the impact of existing environmental conditions on a proposed project's residents and users. The Guidelines also prove consequential given that under section 21082, CEQA requires agencies subject to its provisions — such as the District — to adopt "objectives, criteria and procedures" for evaluating projects and preparing
385 environmental documents. These agencies may, in turn, adopt the Guidelines by reference to *385 fulfill their statutory responsibilities. (§ 21082; see Guidelines, § 15022, subds. (a), (d).) The Guidelines, in effect, enable the Resources Agency to promote consistency in the evaluation process that constitutes the core of CEQA. And because these Guidelines allow the Resources Agency to affect how agencies comply with CEQA, they are central to the statutory scheme. (Cf. Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 566 [276 Cal.Rptr. 410, 801 P.2d 1161] [noting that certain "statutory and judicial concepts are carried forward in the Guidelines ..."]; *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 171 [258 Cal.Rptr. 147] ["[B]ecause [CEQA] *specifically incorporates the Guidelines pertaining to categorical exemptions,* the philosophy and policies underlying the categorical exemptions should be paramount." (italics added)].)

Especially relevant to the question before us is one such provision of the Guidelines, section 15126.2, subdivision (a) (Guidelines section 15126.2(a)). Promulgated pursuant to section 21083 of the statute, Guidelines section 15126.2(a) reflects the Resources Agency's interpretation of CEQA. It calls for an EIR to "identify and focus on the significant environmental effects of the proposed project," including "any significant environmental effects the project might cause *by bringing development and people into the area affected."* (Italics added.) The Guideline then continues by providing an example, indicating that an EIR for a project "on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision" because that "subdivision would have the effect of attracting people to the location and exposing them to the hazards found there." (Guidelines, § 15126.2(a).) The Guideline likewise calls for an EIR to "evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas." (Guidelines, § 15126.2(a).)

Guidelines section 15126.2(a), in short, indicates that CEQA generally requires an evaluation of environmental conditions and hazards existing on a proposed project site if such conditions and hazards may cause substantial adverse impacts to future residents or users of the project. Given that this Guideline seems to furnish a specific answer to the question before us, it is perhaps not surprising that the District and CBIA dispute its validity.[10]

386 *386 ## C. CEQA's General Rule

The District and CBIA disagree about this Guideline because they diverge on how to interpret section 21083. The core of their disagreement is what the statute means when it provides that a "project may have a `significant effect on the environment'" (§ 21083(b)) if "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." (§ 21083(b)(3).) The District reads the statutory language to encompass the question of how existing environmental conditions or hazards in the vicinity of a proposed project might substantially, and adversely, impact future residents or users. Under this view, when existing environmental conditions on or near the proposed project site pose hazards to humans brought to the site by the project, the project may have potentially significant environmental effects requiring evaluation.

CBIA takes a contrasting view. It asserts that section 21083(b)(3)'s reference to the "environmental effects of a project" only applies to a project's effects on the environment, and does not include the effects of a site's environment on a project, or on its residents and users.[11] CBIA contends that the District's construction contradicts CEQA's clear language and distorts the intent of the statutory scheme, and that adopting it would "impose[] procedural or substantive requirements beyond those explicitly stated" in CEQA or its Guidelines. (§ 21083.1.)

In light of CEQA's text and structure, we conclude that CEQA generally does not require an analysis of how existing environmental conditions will impact a project's future users or residents. The District emphasizes, correctly, that CEQA addresses human health and safety. Section 21083(b)(3)'s express language, for example, requires a finding of a "`significant effect on the environment'" (§ 21083(b)) whenever the "environmental effects of a project will cause substantial adverse effects *on human beings,* either directly or indirectly." (§ 21083(b)(3), italics added.) And the Legislature has made clear — in declarations accompanying CEQA's enactment — that public health and safety are of great importance in the statutory scheme. (E.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d) [emphasizing the need to provide for the public's welfare, health, safety, enjoyment, and living environment].) Still, the District reads too much into the phrase "environmental effects of a project."

387 *387 The District's reading of that phrase goes too far despite all the reasons for us to give the Resources Agency's interpretation — an interpretation broadly consistent with that of the District — special weight. The statute does not provide enough of a basis to suggest that the term "environmental effects" as used in this context is meant, as a general matter, to encompass these broader considerations associated with the health and safety of a project's future residents or users. Section 21060.5 defines "environment" as "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic

or aesthetic significance." (§ 21060.5.) Given the text of section 21083 and other relevant provisions of the statutory scheme to which it belongs — including CEQA's statute-wide definition of "environment" — the phrase in question is best interpreted as limited to those impacts on a project's users or residents that arise from the project's effects on the environment. Even if one reads into CEQA's definition of "environment" a concern with people — a reading that, notwithstanding section 21060.5, is conceivable given the Legislature's interest in public health and safety — section 21083 does not contain language directing agencies to analyze the environment's effects *on* a project. Requiring such an evaluation in all circumstances would impermissibly expand the scope of CEQA.

The rest of the statute's relevant provisions underscore why. Despite the statute's evident concern with protecting the environment and human health, its relevant provisions are best read to focus almost entirely on how projects affect the environment. (E.g., §§ 21060.5 [defining environment], 21068 ["`Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment."], 21083(b)(1) [directing that a project shall be found to have a "`significant effect on the environment'" if it "has the potential to degrade the quality of the environment"].) Indeed, the key phrase "significant effect on the environment" is explicitly defined by statute in a manner that does not encompass the environment's effect on the project. (§ 21068 ["`Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment."].) And nowhere in the statute is there any provision that cuts against the specificity of that definition by plainly delegating power for the agency to determine whether a project must be screened on the basis of how the environment affects its residents or users.

Consider the alternative: stretching the definition so it encompasses the analysis of how environmental conditions could affect a project's future residents — the kind of analysis that the Guidelines purport to require — would require us to define "environmental effects of a project" in a manner that all but elides the word "environmental." That approach, in turn, would allow the phrase to encompass nearly any effect a project has on a resident or user. Given the sometimes costly nature of the analysis required
388 under CEQA *388 when an EIR is required, such an expansion would tend to complicate a variety of residential, commercial, and other projects beyond what a fair reading of the statute would support.

With this holding in mind, we must distinguish between requirements that consider the *environment's* effects on a project and those that contemplate the *project's* impacts on the existing environment. The former, in light of our analysis of section 21083 and other relevant language in CEQA, are invalid. The latter, however, are valid and entirely consistent with CEQA's concerns about environmental protection, public health, and deliberation. Moreover, and consistent with CEQA's general rule, we note that the statute does not proscribe consideration of existing conditions.[12] In fact, CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present. Accordingly, we find that the following sentences of Guidelines section 15126.2(a) — challenged by CBIA as unauthorized under the statute[13] — are valid under CEQA: "The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.... Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas."

These sentences are valid to the extent they call for evaluating a project's potentially significant *exacerbating* effects on existing environmental hazards — effects that arise because the project brings "development and people into the area affected." Both CEQA and the Guideline call explicitly for an
389 analysis of a project's effects *on the environment*. In this respect, the *389 Resources Agency's directive is consistent with section 21083(b)(3)'s plain language, as the Guideline contemplates analyzing those existing conditions impacted directly by a project's siting or development. Moreover, both sentences reflect the Resources Agency's reasonable construction of CEQA. We defer to that interpretation, finding it not to be proscribed by the statutory language.

Indeed, the statutory language emphasizes how the analysis of a project's potential to exacerbate existing conditions is not an exception to, but instead a consequence of, CEQA's core requirement that an agency evaluate a project's impact on the environment. An example may be illuminating. Suppose that an agency wants to locate a project next to the site of a long-abandoned gas station. For years, that station pumped gasoline containing methyl tertiary-butyl ether (MTBE), an additive — now banned by California — that can seep into soil and groundwater. (See *Western States Petroleum Assn. v. State Dept. of Health Services* (2002) 99 Cal.App.4th 999, 1003 [122 Cal.Rptr.2d 117]; Cal. Code Regs., tit. 13, § 2262.6, subd. (a) [prohibiting the addition of MTBE to gasoline starting Dec. 31, 2003].) Without any additional development in the area, the MTBE might well remain locked in place, an existing condition whose risks — most notably the contamination of the drinking water supply — are limited to the gas station site and its immediate environs. But by virtue of its proposed location, the project threatens to disperse the settled MTBE and thus exacerbate the existing contamination. The agency would have to evaluate the existing condition — here, the presence of MTBE in the soil — as part of its environmental review. Because this type of inquiry still focuses on the *project's impacts on the environment* — how a project might worsen existing conditions — directing an agency to evaluate how such worsened conditions could affect a project's future users or residents is entirely consistent with this focus and with CEQA as a whole.

These Guideline sentences reflect the Resources Agency's reading of CEQA — a reading made clear in 2009 when the agency added the final sentence of Guidelines section 15126.2(a). (Cal. Natural Resources Agency, Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97 (Dec. 2009) pp. 42-43 ["[A] lead agency should analyze the effects of bringing development to an area that is susceptible to hazards such as flooding and wildfire, both as such hazards currently exist or may occur in the future.... [¶] ... [T]he addition to [Guidelines section 15126.2(a)] contemplates hazards which the presence of a project could exacerbate...."].)

Two factors add weight to the Resources Agency's interpretation of the statute. First, an agency's
390 expertise and technical knowledge, especially *390 when it pertains to a complex technical statute, is relevant to the court's assessment of the value of an agency interpretation. (*Yamaha, supra*, 19 Cal.4th at p. 12.) Because of its long-standing statutory role as the agency with primary responsibility for statewide implementation of CEQA, the Resources Agency is precisely the kind of agency that accumulates specialized knowledge of such an intricate statute and the trade-offs involved in its implementation. (Cf. *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 572-573 [38 Cal.Rptr.2d 139, 888 P.2d 1268] [administrative agency implementing CEQA merits deference]; *In re*

*Dannenberg* (2005) 34 Cal.4th 1061, 1108 [23 Cal.Rptr.3d 417, 104 P.3d 783] (dis. opn. of Moreno, J.) ["deference is particularly owing when the statutory interpretation implicates administrative agency expertise"].) The statute itself recognizes the primacy of the Resources Agency: the agency must certify and adopt the Guidelines that bind public agencies as they navigate the often technical and complex waters of CEQA. (§ 21083, subd. (e); see Guidelines, § 15000 ["These Guidelines are binding on all public agencies in California."].)

Second, the Resources Agency adopted the Guidelines pursuant to the Administrative Procedure Act (APA). (Gov. Code, § 11340 et seq.) The APA subjects potential agency interpretations to procedural safeguards that foster accuracy and reliability. (See *Yamaha, supra*, 19 Cal.4th at p. 13.) Section 21083 prohibits the Resources Agency from adopting the Guidelines without certain of these APA safeguards, including notice, public discussion, and an opportunity to comment. (§ 21083, subd. (e); Gov. Code, §§ 11346.4, 11346.5, 11346.8.) The Guidelines are a product of this process, promulgated in accordance with these important safeguards. (See, e.g., Cal. Reg. Notice Register 97, No. 41-Z, pp. 1956-1957 [notice of proposed regulatory action, setting forth the dates and specifications of public hearings, and inviting comments from interested persons].) As a result, the Resources Agency's interpretation, as embodied in Guidelines section 15126.2(a), carries additional weight.

But such weight may sometimes fail to tip the interpretive scale. While these two sentences withstand scrutiny, the remainder of the challenged portion of the Guidelines goes astray, imposing a requirement too far removed from evaluating a project's impacts on the environment. Accordingly, whatever deference we owe to the Resources Agency's interpretation is not enough to save the following sentences of Guidelines section 15126.2(a), which we find clearly erroneous and unauthorized under CEQA: "[A]n EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there." These sentences are inconsistent with section 21083's consideration of significant environmental effects.

391

## '391 D. *Exceptions to the General Rule*

Although CEQA does not generally require an evaluation of the effects of existing hazards on future users of the proposed project, it calls for such an analysis in several specific contexts involving certain airport (§ 21096) and school construction projects (§ 21151.8), and some housing development projects (§§ 21159.21, subds. (f), (h), 21159.22, subds. (a), (b)(3), 21159.23, subd. (a)(2)(A), 21159.24, subd. (a)(1), (3), 21155.1, subd. (a)(4), (6).)

Section 21096 requires a lead agency to use certain technical resources when addressing airport-related safety hazards and noise problems in EIRs for projects near airports (§ 21096, subd. (a)), and prohibits a lead agency from adopting a negative declaration without considering "whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area." (§ 21096, subd. (b).) Section 21151.8 mandates certain methods to determine if school sites are located on or near sources of hazardous substances or waste or in close proximity to freeways or other operations that might emit hazardous emissions. (§ 21151.8, subd. (a), (a)(2)(A) [detailing health and safety risks and hazardous conditions and setting forth the process for

consulting with air quality districts and other agencies].)

A separate cluster of statutes limits the availability of CEQA exemptions where future residents or users of certain housing development projects may be harmed by existing conditions. These limits on exemptions extend to projects located on sites that will expose future occupants to certain hazards and risks — including the release of hazardous substances and sites subject to wild land fire, seismic, landslide or flood hazards — unless (in some cases) the hazards and risks can be removed or mitigated to insignificant levels. (E.g., §§ 21159.21, subds. (f), (h), 21159.22, subds. (a), (b)(3) [agricultural employee housing], 21159.23, subd. (a)(2)(A) [affordable to low-income housing], 21159.24, subd. (a)(1), (3) [infill housing].) Transit priority projects are treated in similar fashion, subject to the same health and safety constraints that limit exemptions for other housing projects. (E.g., § 21155.1, subd. (a)(4), (6) [project meeting same environmental criteria, including where the project site is not subject to on site hazardous substances or fire or seismic risk, may qualify as a sustainable communities project, which excuses further CEQA compliance].) Like the statutes governing certain school and airport construction projects, these statutes reflect an express legislative directive to consider whether existing environmental conditions might harm those who intend to occupy or use a project site.

392 *392 The District argues that these statutes "demonstrate the legislative understanding that exposing people to [certain existing hazards and] conditions is a potentially significant environmental effect." We find otherwise: these statutes constitute specific exceptions to CEQA's general rule requiring consideration only of a project's effect on the environment, not the environment's effects on project users. Accordingly, we cannot, as the District urges, extrapolate from these statutes an overarching, general requirement that an agency analyze existing environmental conditions whenever they pose a risk to the future residents or users of a project.

## E. *Previous Case Law*

CBIA cites four Court of Appeal decisions in support of its position: *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464 [38 Cal.Rptr.2d 93]; *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889 [98 Cal.Rptr.3d 137]; *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604 [127 Cal.Rptr.3d 636]; and *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455 [134 Cal.Rptr.3d 194]. The conclusion that we reach today is not inconsistent with these cases, all of which implicitly held that CEQA does not *generally* require an agency to analyze how existing hazards or conditions might impact a project's users or residents. Further, these Courts of Appeal did not have occasion to consider — and therefore did not rule out — the exceptions to the general rule that we elucidate here.

# III. DISPOSITION

For the foregoing reasons, we hold that CEQA does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents. What CEQA does mandate, consistent with a key element of the Resources Agency's interpretation, is an analysis of how a project might exacerbate existing environmental hazards. CEQA also requires such an

analysis where the project in question falls into certain specific statutory categories governing school, airport, and certain housing projects under sections 21151.8, 21096, 21159.21, 21159.22, 21159.23, 21159.24, and 21155.1. Accordingly, we find Guidelines section 15126.2(a) valid only in part.

The Court of Appeal denied CBIA's request for writ relief on a variety of grounds, and it reversed the superior court's decision awarding CBIA attorney fees. But the court's analysis of CBIA's petition for writ relief did not address certain potentially important arguments for and against such relief in light of CEQA's requirements as we interpret them here. We reverse the Court of Appeal's judgment and remand so that it may have an opportunity to address these issues to the extent necessary in light of today's holding.

Cantil-Sakauye, C. J., Werdegar, J., Chin, J., Corrigan, J., Liu, J., and Kruger, J., concurred.

[1] All further statutory references are to this code unless otherwise indicated.

[2] Our recitation of the factual and procedural background is taken largely from the opinion of the Court of Appeal.

[3] All references to "Guideline" or "Guidelines" are to the CEQA Guidelines in title 14 of the California Code of Regulations.

[4] In 2006, the Legislature enacted the California Global Warming Solutions Act of 2006 (Health & Saf. Code, § 38500 et seq.), which seeks to achieve a reduction of GHG emissions to 1990 levels by 2020. (*Id.*, § 38550.) In 2008, the Legislature enacted the "Sustainable Communities and Climate Protection Act." (Stats. 2008, ch. 728, p. 5065.)

[5] An urban infill project refers to a project located on a site in an urbanized area that meets specified conditions, including that a specified percentage of the immediately adjacent parcels or adjoining parcels to the site are developed with qualified urban uses, or that the site itself has been previously developed for qualified urban uses. (See § 21061.3.)

[6] We declined CBIA's invitation to review whether the District's adoption of the 2010 thresholds constituted a project subject to environmental review under CEQA, and do not address the Court of Appeal's conclusion that the receptor thresholds have valid applications.

[7] Our court has not decided "'whether the Guidelines are regulatory mandates or only aids to interpreting CEQA.'" (*Committee for Green Foothills, supra,* 48 Cal.4th at p. 48, fn. 12.)

[8] A negative declaration is a "written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report." (§ 21064.)

[9] Section 21083 also directs OPR to recommend, at least every two years, amendments to the Guidelines. The statute likewise directs the Resources Agency to certify and adopt Guidelines and amendments thereto at least every two years. (§ 21083, subd. (f).) Prior to final certification and adoption of the Guidelines and Guidelines amendments, the Secretary of the Resources Agency makes the proposed language available to the public and provides for at least a 45-day written comment period and public hearings on the proposals. (§ 21083, subds. (e), (f); Gov. Code, §§ 11346.4, 11346.5, 11346.8.) These public comments are considered by the secretary in determining whether to adopt the OPR's proposed amendments.

[10] OPR represents it will not suggest any changes to Guidelines section 15126.2 pending this court's decision in the instant case. (OPR, Possible Topics to be Addressed in the 2014 CEQA Guidelines Update (Dec. 30, 2013) § IV, p. 7.)

[11] CBIA uses the term "reverse CEQA" to refer to an evaluation of how existing conditions might impact a project's future residents or users. We find this term misleading and inapt. Because CEQA does sometimes require analysis of the effect of existing conditions on a project's future residents or users, such analysis is not the "reverse" of what CEQA mandates. (See pp. 391-392, *post.*)

[12] Nor, for that matter, does CEQA *prohibit* an agency from considering — as part of an environmental review for a project it proposes to undertake — how existing conditions might impact a project's future users or residents. Indeed, it appears that such an analysis had been widely understood to be an integral aspect of CEQA review for three decades. (OPR, CEQA: The California Environmental Quality Act: Law and Guidelines 1984 (Jan. 1984) Discussion of amendments, Guidelines former § 15126, p. 137 [dismissing as early as 1983 the alleged "artificial distinction" between examining "the effects of the project on the environment" and "the effects of the environment on the project"].)

[13] CBIA contends that the following sentences of Guidelines section 15126.2(a) are invalid: "The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas." (Guidelines, § 15126.2(a).)

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**§ 15004. Time of Preparation.**
14 CA ADC § 15004
Barclays Official California Code of Regulations

Barclays California Code of Regulations
Title 14. Natural Resources
Division 6. Resources Agency
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act (Refs & Annos)
Article 1. General

14 CCR § 15004

# § 15004. Time of Preparation.

Currentness

(a) Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration. See the definition of "approval" in Section 15352.

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

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

(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:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that 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.

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

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

(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, an agency shall not grant any vested development entitlements prior to compliance with CEQA. Further, any such pre-approval agreement should, for example:

(A) Condition the agreement on compliance with CEQA;

(B) Not bind any party, or commit to any definite course of action, prior to CEQA compliance;

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

(D) Not restrict the lead agency from denying the project.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. When the lead agency is a state agency, the environmental document shall be included as part of the

regular project report if such a report is used in its existing review and budgetary process.

## Credits

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21105, Public Resources Code; *Friends of Mammoth* v. *Board of Supervisors*, (1972) 8 Cal. 3d 247; *Mount Sutro Defense Committee* v. *Regents of the University of California*, (1978) 77 Cal. App. 3d 20; and *Save Tara* v. *City of West Hollywood* (2008) 45 Cal.4th 116.

HISTORY

1. New section filed 7-13-83; effective thirtieth day thereafter (Register 83, No. 29).

2. Editorial correction of 7-13-83 order redesignating effective date to 8-1-83 filed 7-14-83 (Register 83, No. 29).

3. New subsections (b)(2)-(b)(2)(B), subsection renumbering, amendment of subsection (c), and amendment of NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

4. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

5. Redesignation of portions of subsection (b)(2) as new subsections (b)(2)(A)-(B), new subsections (b)(4)-(b)(D) and amendment of NOTE filed 12-28-2018; operative 12-28-2018 pursuant to Government Code section 11343.4(b)(3) (Register 2018, No. 52).

This database is current through 1/20/23 Register 2023, No. 3.

Cal. Admin. Code tit. 14, § 15004, 14 CA ADC § 15004

END OF DOCUMENT

**§ 15065. Mandatory Findings of Significance.**
14 CA ADC § 15065
Barclays Official California Code of Regulations

Barclays California Code of Regulations
Title 14. Natural Resources
Division 6. Resources Agency
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act (Refs & Annos)
Article 5. Preliminary Review of Projects and Conduct of Initial Study

14 CCR § 15065

# § 15065. Mandatory Findings of Significance.

Currentness

(a) 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:

(1) The project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species; or eliminate important examples of the major periods of California history or prehistory.

(2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(b)(1) Where, prior to the commencement of public review of an environmental document, a project proponent agrees to mitigation measures or project modifications that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environmental impact report solely because, without mitigation, the environmental effects at issue would have been significant.

(2) Furthermore, where a proposed project has the potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species, the lead agency need not prepare an EIR solely because of such an effect, if:

(A) the project proponent is bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan or natural community conservation plan;

(B) the state or federal agency approved the habitat conservation plan or natural community conservation plan in reliance on an environmental impact report or environmental impact statement; and

(C)1. such requirements avoid any net loss of habitat and net reduction in number of the affected species, or

2. such requirements preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species to below a level of significance.

(c) Following the decision to prepare an EIR, if a lead agency determines that any of the conditions specified by subdivision (a) will occur, such a determination shall apply to:

(1) the identification of effects to be analyzed in depth in the environmental impact report or the functional equivalent thereof,

(2) the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or

avoid the significant effects on the environment,

(3) when found to be feasible, the making of changes in the project to substantially lessen or avoid the significant effects on the environment, and

(4) where necessary, the requirement to adopt a statement of overriding considerations.

## Credits

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21001(c) and 21083, Public Resources Code; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

HISTORY

1. Amendment of subsection (a) and NOTE filed 5-27-97; operative 5-27-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 22).

2. Amendment of subsection (c) and NOTE filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

3. Amendment of section and NOTE filed 9-7-2004; operative 9-7-2004 pursuant to Public Resources Code section 21083(e) (Register 2004, No. 37).

4. Change without regulatory effect amending subsections (b)(1) and (c) and amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

5. Amendment of subsection (b)(1) filed 2-16-2010; operative 3-18-2010 (Register 2010, No. 8).

This database is current through 12/30/22 Register 2022, No. 52.

Cal. Admin. Code tit. 14, § 15065, 14 CA ADC § 15065

END OF DOCUMENT

**Chevron is measuring the following chemical compounds with the open-path fence-line monitors at their El Segundo Oil Refinery:**

1,3-Butadiene (C4H6)
Acetaldehyde (C2H44)
Acrolein (C3H4O)
Ammonia (NH3)
BTEX (benzene, toluene, ethylbenzene, and xylenes)
Black Carbon (BC)
Carbonyl Sulfide (COS)
Formaldehyde (CH2O)
Hydrogen Cyanide (HCN)
Hydrogen Sulfide (H2S)
Nitrogen Dioxide (NO2)
Styrene (C8H8)
Sulfur Dioxide (SO2)
Volatile Organic Compounds (VOCs)

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**1,3-Butadiene (C4H6)**
1,3-Butadiene is a colorless gas with a mild gasoline-like odor. Inhalation of 1,3-butadiene at lower or short-term levels may cause irritation of the eyes, nose, throat, and lungs. At very high levels, neurological effects such as blurred vision, fatigue, headache, and vertigo have been reported. 1,3-butadiene is classified as a human carcinogen by inhalation.

**Acetaldehyde (C2H44)**
At room temperature, acetaldehyde is a colorless liquid that easily burns and has a strong fruity odor. Short-term exposure to acetaldehyde may irritate the eyes, skin, or respiratory tract irritation. At high exposure levels, acetaldehyde may cause erythema (skin redness), coughing, or fluid build-up in the lungs. The U.S. Environmental Protection Agency (U.S. EPA) classifies acetaldehyde as a probable human carcinogen.

**Acrolein (C3H4O)**
At room temperature, acrolein is a clear or yellow liquid with a burned, sweet, pungent odor. Short-term inhalation of low levels of acrolein may cause watery eyes or a burning sensation of the nose or throat. Exposure to higher levels of acrolein may result in severe watery eyes, respiratory congestion, and eye, nose, and throat irritation. Long-term inhalation of acrolein may damage the respiratory tract.

**Ammonia (NH3)**
Ammonia comes in two forms: anhydrous form, which is a colorless gas with a pungent odor; and liquid form, known to most people for its use in many household and industrial cleaners. At high levels, ammonia may irritate the skin,

eyes, throat, and lungs and may cause coughing or burns. People who have asthma or other respiratory tract problems are more susceptible to these irritant effects.

**BTEX (benzene, toluene, ethylbenzene, and xylenes)**
BTEX is an acronym for the aromatic hydrocarbon compounds benzene, toluene, ethylbenzene, and xylenes, which occur naturally in crude oil. At room temperature, all are colorless liquids. Benzene and xylenes have sweet odors, while ethylbenzene smells like gasoline, and toluene smells like paint thinner. Short-term inhalation of high levels of benzene can cause dizziness, lightheadedness, and headaches as well as respiratory irritation. The long-term effects of benzene exposure are related to anemia and effects on the bone marrow. Benzene is classified as a human carcinogen based on occupational exposures.

**Black Carbon (BC)**
Black carbon is a major component of soot, the black material produced as a result of incomplete combustion of fossil fuels, biofuels, and biomass. Black carbon in the atmosphere exists primarily as particles too small to see (about 2.5 microns or less). Black carbon can irritate the lungs and aggravate respiratory illnesses such as asthma and bronchitis.

**Carbonyl Sulfide (COS)**
Carbonyl sulfide is a colorless gas with a sulfur odor. Very little is known about the health effects of carbonyl sulfide. Short-term inhalation of high levels of carbonyl sulfide may irritate the eyes and skin and may also cause narcotic effects.

**Formaldehyde (CH2O)**
Formaldehyde is a colorless gas with a strong pungent odor. Everyone is exposed to small amounts of formaldehyde in air and in some foods and consumer products. Formaldehyde can cause irritation of the eyes, nose, and throat and neurological effects. Formaldehyde may increase the risk of asthma and allergic reactions. Formaldehyde is classified as a compound that can cause cancer.

**Hydrogen Cyanide (HCN)**
Hydrogen cyanide is a colorless liquid or gas (depending on the temperature) with a bitter almond smell. Short-term exposure to lower levels of hydrogen cyanide can cause a variety of effects such as weakness, headache, nausea, increased rate of respiration, and eye and skin irritation. At higher levels, hydrogen cyanide is an asphyxiant, meaning that it interferes with the normal use of oxygen by nearly every organ in the body.

**Hydrogen Sulfide (H2S)**
Hydrogen sulfide is a colorless, flammable gas with a rotten egg odor. It can be

smelled at very low concentrations in air, at least 1000 times below the level that would cause eye and lung irritation. Hydrogen sulfide at high levels can cause watery eyes and/or induce symptoms related to the loss of sense of smell, including headache, nausea, or vomiting. At extremely high levels, hydrogen sulfide can be deadly, particularly in enclosed spaces—the gas is heavier than air and interferes with our ability to breathe oxygen.

**Nitrogen Dioxide (NO2)**
Nitrogen dioxide and nitrogen oxide or NOx are a group of gases composed of nitrogen and oxygen in varying amounts. Nitrogen oxides are one of the two federally regulated "criteria" pollutants that are monitored as part of the community-monitoring program. The two NOx compounds of most health concern are nitrogen oxide (NO) and nitrogen dioxide (NO2), which can combine with particles in the air to form a reddish-brown smog layer. Low levels of nitrogen oxides can irritate the eyes, nose, throat, and lungs, and may cause a cough, shortness of breath, tiredness, and nausea. Exposure to higher levels of NOx can damage the respiratory airways. NO2 exposure also can intensify allergic responses in asthmatics.

**Styrene (C8H8)**
At room temperature, styrene is a colorless, oily liquid with a strong sweet odor. Short-term exposure to styrene may cause eye and mucous membrane irritation or gastrointestinal effects. Long-term exposure or exposure to high levels of styrene may cause central nervous system effects such as headache, fatigue, weakness, depression, neurological dysfunction, hearing loss, and peripheral numbness. Styrene is classified as a probable human carcinogen.

**Sulfur Dioxide (SO2)**
Sulfur dioxide is a colorless gas with a burnt match smell. Sulfur dioxide is one of the two federally regulated "criteria" pollutants that are monitored as part of the community-monitoring program. It is used as an indicator of sulfur oxides or SOx concentrations in air. At high levels, sulfur dioxide can irritate the lungs, cause difficulty breathing, and cause burning of the nose or throat. Children, the elderly, and people, with asthma, heart disease, or chronic lung disease (such as bronchitis or emphysema) are most susceptible.

**Volatile Organic Compounds (VOCs)**
VOCs are a class of carbon-containing chemicals, such as alcohols, that easily evaporate into the air. Most scents/odors result from VOCs. The health effects of short-term exposure to various VOCs may include eye, nose, and throat irritation; headaches; dizziness; and vision or memory problems. Long-term exposure to VOCs may include nausea, fatigue, loss of coordination, or damage to the liver, kidneys, or central nervous system. Some of these compounds are carcinogens in animals or humans.

**§ 15126.2. Consideration and Discussion of Significant Environmental Impacts.**
14 CA ADC § 15126.2
Barclays Official California Code of Regulations

Barclays California Code of Regulations
Title 14. Natural Resources
Division 6. Resources Agency
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act (Refs & Annos)
Article 9. Contents of Environmental Impact Reports

14 CCR § 15126.2

# § 15126.2. Consideration and Discussion of Significant Environmental Impacts.

Currentness

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant effects of the proposed project on the environment. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected. For example the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified in authoritative hazard maps, risk assessments or in land use plans, addressing such hazards areas.

(b) Energy Impacts. If analysis of the project's energy use reveals that the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary use of energy, or wasteful use of energy resources, the EIR shall mitigate that energy use. This analysis should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project. (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 use that is caused by the project. This analysis may be included in related analyses of air quality, greenhouse gas emissions, transportation or utilities in the discretion of the lead agency.

(c) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

(d) Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified. (See Public Resources Code section 21100.1 and Title 14, California Code of Regulations, section 15127 for limitations to applicability of this requirement.)

(e) Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some

projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

## Credits

NOTE: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21002, 21003 and 21100, Public Resources Code; *CBIA v. BAAQMD* (2015) 62 Cal.4th 369; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal. App. 4th 256; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Goleta Union School Dist. v. Regents of the Univ. of California* (1995) 37 Cal. App.4th 1025.

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

2. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

3. Amendment of subsections (a) and (c) and NOTE filed 2-16-2010; operative 3-18-2010 (Register 2010, No. 8).

4. Amendment of subsection (a), new subsection (b), subsection relettering and amendment of NOTE filed 12-28-2018; operative 12-28-2018 pursuant to Government Code section 11343.4(b)(3) (Register 2018, No. 52).

This database is current through 1/20/23 Register 2023, No. 3.

Cal. Admin. Code tit. 14, § 15126.2, 14 CA ADC § 15126.2

END OF DOCUMENT

THOMSON REUTERS
WESTLAW California Code of Regulations



**§ 15194. Affordable Housing Exemption.**
14 CA ADC § 15194
Barclays Official California Code of Regulations

Barclays California Code of Regulations
Title 14. Natural Resources
Division 6. Resources Agency
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act (Refs & Annos)
Article 12.5. Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

14 CCR § 15194

# § 15194. Affordable Housing Exemption.

Currentness

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile.

(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(2) The project meets one of the following site-specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.

2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.

3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing.

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households.

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

pursuant to Section 50053 of the Health and Safety Code.

## Credits

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

HISTORY

1. New section filed 7-27-2007; operative 7-27-2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

This database is current through 1/20/23 Register 2023, No. 3.

Cal. Admin. Code tit. 14, § 15194, 14 CA ADC § 15194

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**§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, an...**
14 CA ADC § 15192
Barclays Official California Code of Regulations

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Title 14. Natural Resources
Division 6. Resources Agency
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act (Refs & Annos)
Article 12.5. Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

14 CCR § 15192

# § 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

Currentness

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

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

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

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

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

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

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

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

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

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

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

## Credits

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.21 and 21159.27, Public Resources Code.

HISTORY

1. New section filed 7-27-2007; operative 7-27-2007 pursuant to Public Resources Code section 21083(f) (Register 2007, No. 30).

This database is current through 1/20/23 Register 2023, No. 3.

Cal. Admin. Code tit. 14, § 15192, 14 CA ADC § 15192

END OF DOCUMENT

# The City of Manhattan Beach
# Local Coastal Program
# Phase III
# Implementation Program

**June 2017**

Certified by the California Coastal Commission on May 24, 1994

Amended by:

-Ordinance No. 1961 (March 18, 1997)
-Ordinance No. 1971 (October 7, 1997)
-Ordinance No. 1992 (January 5, 1999)
-Ordinance No. 1999 (March 2, 1999)
-Ordinance No. 2000 (April 20, 1999)
-Ordinance No. 2007 (October 19, 1999)
-Ordinance No. 2014 (June 6, 2000)
-Ordinance No. 2027 (March 20, 2001)
-Ordinance No. 2033 (April 2, 2002)
-Ordinance No. 2039 (December 3, 2002)
-Ordinance No. 2051 (December 2, 2003)
-Ordinance No. 2069 (December 21, 2004)
-Ordinance No. 2074 (March 15, 2005)
-Ordinance No. 2075 (May 17, 2005)
-Ordinance No. 2076 (May 17, 2005)
-Ordinance No. 2078 (September 20, 2005)
-Ordinance No. 2112 (January 15, 2008)
-Ordinance No. 2147 (June 21, 2011)
-Ordinance No. 13-0012 (February 5, 2013)
-Ordinance No. 15-0002 (January 20, 2015)
-Ordinance No. 15-0028 (November 3, 2015)
-Ordinance No. 16-0001 (January 19, 2016)

1. **Mailed or Delivered Notice**. At least ten (10) days prior to the hearing, notice shall be: (1) mailed to the applicant; (2) all owners of property within five hundred feet (500') of the boundaries of the site, as shown on the last equalized property tax assessment role or the records of the County Assessor, Tax Collector, or the City's contractor for such records and (3) any agency as required by Government Code Section 65091.

2. **Posted Notice**. Notwithstanding the requirements of Section 1.08.140 of this Code, notice shall be posted at City Hall.

3. **Published Notice**. Notice shall be published in a newspaper of general circulation in accordance with Section 65090 and 65091 of the California Government Code.

C. **Contents of Notice**. The notice of public hearing shall contain:

1. A description of the location of the development site and the purpose of the application;

2. A statement of the time, place, and purpose of the public hearing;

3. A reference to application materials on file for detailed information; and

4. A statement that any interested person or an authorized agent may appear and be heard.

D. **Multiple Applications.** When applications for multiple use permits, variances or site development permits on a single site are filed at the same time, the Community Development Director shall schedule a combined public hearing.

**A.84.050. Duties of Planning Commission.**

A. Public Hearing. The Planning Commission shall conduct the public hearing and hear testimony for and against the application. A public hearing may be continued to a definite date and time without additional public notice.

B. Decision and Notice. After the close of the public hearing, the Planning Commission shall approve, conditionally approve, or disapprove of application. Notice of the decision shall be mailed to the applicant and any other party requesting such notice within 7 days of the date of the resolution ratifying the decision.

C. Limits on Conditions of Approval. No conditions of approval of a use permit shall include use, height, bulk, density, open space, parking, loading, or sign requirements that are less restrictive than those prescribed by applicable district regulations.

**A.84.060. Required findings.**

An application for a use permit, variance, precise development plan or site development permit shall be approved if, on the basis of the application, plans, materials, and testimony submitted, the decision making authority finds that:

A. **For All Use Permits.**

1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located;

2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city;

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located; and

4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated.

B. **For Variances.**

1. Because of special circumstances or conditions applicable to the subject property—including narrowness and hollowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions—strict application of the requirements of this title would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;

2. The relief may be granted without substantial detriment to the public good; without substantial impairment of affected natural resources; and not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and

3. Granting the application is consistent with the purposes of this title and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district and area district.

4. OS District Only. Granting the application is consistent with the requirements of Section 65911 of the Government Code and will not conflict with General Plan policy governing orderly growth and development and the preservation and conservation of open-space laws.

C. **For Precise Development Plans and Site Development Permits.**

1. The proposed project is consistent with the General Plan and Local Coastal Program;

2. The physical design and configuration of the proposed project are in compliance with all applicable zoning and building ordinances, including physical development standards.

D. **Mandatory Denial.** Failure to make all the required findings under (A), (B), (C) or (D) shall require denial of the application for a use permit, variance, precise development plan or site development permit.

**A.84.070. Conditions of approval.**

A. In approving a precise development plan or site development permit, reasonable conditions may be imposed as necessary to make the required findings.

B. In approving a use permit or variance, reasonable conditions may be imposed as necessary to:

1. Achieve the general purposes of this ordinance or the specific purposes of the zoning district in which the site is located, or to make it consistent with the General Plan;

2. Protect the public health, safety, and general welfare; or

3. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.

4. Provide for periodic review of the use to determine compliance with conditions imposed, and Municipal Code requirements.

**A.84.080. Effective date—Appeals.**

Unless appealed in accordance with Chapter 10.100 of the Manhattan Beach Municipal Code, a use permit, variance, minor exception, precise development plan or site development permit shall become effective after expiration of the time limits for appeal set forth in Chapter 10.100.

**A.84.090. Lapse of approval—Transferability—Discontinuance—Revocation.**

A. **Lapse of Approval.** A use permit, variance, minor exception, precise development plan or site development permit shall lapse two (2) years or at an alternative time specified as a condition of approval after its date of approval unless:

1. A building permit has been issued and substantial expenditures have been made in reliance on that permit; or

2. A certificate of occupancy has been issued; or

3. The use is established; or

4. The use permit, variance, minor exception, precise development plan or site development permit is renewed.

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**§ 15268. Ministerial Projects.**
14 CA ADC § 15268
Barclays Official California Code of Regulations

Barclays California Code of Regulations
Title 14. Natural Resources
Division 6. Resources Agency
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act (Refs & Annos)
Article 18. Statutory Exemptions

14 CCR § 15268

# § 15268. Ministerial Projects.

Currentness

(a) Ministerial projects are exempt from the requirements of CEQA. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws, and each public agency should make such determination either as a part of its implementing regulations or on a case-by-case basis.

(b) In the absence of any discretionary provision contained in the local ordinance or other law establishing the requirements for the permit, license, or other entitlement for use, the following actions shall be presumed to be ministerial:

(1) Issuance of building permits.

(2) Issuance of business licenses.

(3) Approval of final subdivision maps.

(4) Approval of individual utility service connections and disconnections.

(c) Each public agency should, in its implementing regulations or ordinances, provide an identification or itemization of its projects and actions which are deemed ministerial under the applicable laws and ordinances.

(d) Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.

## Credits

NOTE: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(b)(1), Public Resources Code; *Day* v. *City of Glendale*, 51 Cal. App. 3d 817.

HISTORY

1. Change without regulatory effect amending NOTE filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

This database is current through 12/30/22 Register 2022, No. 52.

Cal. Admin. Code tit. 14, § 15268, 14 CA ADC § 15268

END OF DOCUMENT

8 Cal.3d 247 (1972)
502 P.2d 1049
104 Cal. Rptr. 761

# FRIENDS OF MAMMOTH et al., Plaintiffs and Appellants,

v.

# BOARD OF SUPERVISORS OF MONO COUNTY et al., Defendants and Respondents; INTERNATIONAL RECREATION, LTD., Real Party in Interest and Respondent.

Docket No. Sac. 7924.

**Supreme Court of California. In Bank.**

September 21, 1972.

251 *251 COUNSEL

John C. McCarthy and Young, Henrie & McCarthy for Plaintiffs and Appellants.

Evelle J. Younger, Attorney General, Louise H. Renne and Nicholas C. Yost, Deputy Attorneys General,
252 Carlyle W. Hall, Jr., John R. Phillips, *252 Frederic P. Sutherland, Beatrice Challiss Laws, J. Edd Steppe and Sandy English as Amici Curiae on behalf of Plaintiffs and Appellants.

N. Edward Denton, District Attorney, David M. Kennedy, Assistant District Attorney, Kronick, Moskovitz, Tiedemann & Girard, Adolph Moskovitz, Robert E. Murphy and Clifford W. Schulz for Defendants and Respondents.

Gray, Cary, Ames & Frye, R. Reaves Elledge, Jr., and Browning E. Marean III for Real Party in Interest and Respondent.

OPINION

MOSK, J.

This case affords us the first opportunity to construe provisions of the California Environmental Quality Act of 1970 (EQA). (Pub. Resources Code, §§ 21000-21151.)[1] As the express legislative intent forthrightly declares, the EQA was designed to be a milestone in the campaign for "maintenance of a quality environment for the people of this state now and in the future...." (§ 21000, subd. (a).) The specific question presented here is whether a municipal body is required to submit an environmental impact report (see § 21100) pursuant to section 21151 of the code before it issues a conditional use or building permit.

Real party in interest, International Recreation, Ltd. (International) filed an application for a conditional use permit on April 20, 1971, with defendant Mono County Planning Commission (Commission). The application described the proposed use as follows: "Two multi-story structures housing 64 1, 2, 3, 4 bedroom condominiums plus 120 studio-type condominiums, a proposed restaurant and specialty

and building permits. I communicated this intent to other legislators in the course of the legislative process...." (Declaration by John T. Knox, Feb. 1972, plaintiffs' opening brief, appendix C.)

Defendants and International seek to rebut the significance of the Knox declaration by offering a declaration of Assemblyman Carley V. Porter in which he opines that the act does not apply to private activities for which a permit was necessary. (Declaration of Carley V. Porter, Apr. 11, 1972, appendix to defendants' answer to briefs of amici curiae; also see Interim Guidelines for the Preparation and Evaluation of Environmental Impact Statements Under the California Environmental Quality Act of 1970, Office of the Secretary for Resources (draft of Apr. 28, 1972).)

That two legislators report contradictory legislative intent fortifies judicial reticence to rely on statements made by individual members of the Legislature as an expression of the intent of the entire body. (See *Ballard* v. *Anderson* (1971) 4 Cal.3d 873, 881 [95 Cal. Rptr. 1, 484 P.2d 1345]; *Rich* v. *State Board of Optometry* (1965) 235 Cal. App.2d 591, 603 [45 Cal. Rptr. 512] (hg. den.).) Other extrinsic aids to determine legislative intent are generally more persuasive.

Defendants and International also submit a statement by a former consultant to the Assembly Select Committee on Environmental Quality. The consultant, Robert L. Jones, conceded that it was only his "impression" that the EQA was limited to activities undertaken directly by governmental bodies. (Testimony of Robert L. Jones before Senate Committee on Natural Resources and Wildlife, on the Administration of the Environmental Quality Act of 1970 and Related Acts, Dec. 16, 1970, at pp. 3-5.)[3] More significant, perhaps, is the preface to his remarks in which he defers for an authoritative interpretation of the act to "the Legislative [Counsel] or the Attorney General." (*Id.* at p. 2.) To compound the conflict of extrajudicial opinions, the Attorney General has taken the position that the act does apply to private activity (Attorney General of the State of California, In re Proposed Guidelines for the Preparation and Evaluation of Environmental Impact Statements under the California Environmental
259 Quality *259 Act of 1970, at p. 9; amicus curiae brief of the State of California filed herein, at pp. 15-26) whereas the Legislative Counsel has concluded that it does not (letter from George H. Murphy, Legislative Counsel, to Hon. Carley V. Porter, Nov. 23, 1971, appendix to defendants' answer to briefs of amici curiae, exh. 3). We observe, however, that the cursory three-page letter of the Legislative Counsel was not designed to be an in-depth analysis of the type included in the Attorney General's petition and brief which together number some 60 pages.

In resolving the conflict on intent, as we must, we conclude that the Legislature intended the EQA to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. We also conclude that to achieve that maximum protection the Legislature necessarily intended to include within the operation of the act, private activities for which a government permit or other entitlement for use is necessary.

## III

(3a) Defendants and International contend that notwithstanding the broad language of the act, the Legislature did not effectuate this avowed intent in section 21151. They point to the use of the word "project" and the clause that follows it — "they [i.e., local governmental agencies] intend to carry out."

(11) Two general observations, nevertheless, may be made at this time. On the one hand, in view of the clearly expressed legislative intent to preserve and enhance the quality of the environment (§§ 21000, 21001), the courts will not countenance abuse of the "significant effect" qualification as a subterfuge to excuse the making of impact reports otherwise required by the act. In this connection we stress that the Legislature has mandated an environmental impact report not only when a proposed project *will* have a
272 significant environmental effect, but also when it "may" (§§ 21101. *272 21150, 21151) or "could" (§§ 21100, 21102) have such an effect. On the other hand, common sense tells us that the majority of private projects for which a government permit or similar entitlement is necessary are minor in scope — e.g., relating only to the construction, improvement, or operation of an individual dwelling or small business — and hence, in the absence of unusual circumstances, have little or no effect on the public environment. Such projects, accordingly, may be approved exactly as before the enactment of the EQA.

In their petition for rehearing respondents and amici curiae assert that in the period between November 23, 1970, when the EQA went into effect, and September 21, 1972, the date of our decision herein, governmental agencies approved private projects, now either in progress or completed, without requiring the preparation of environmental impact reports, in the erroneous but good faith belief that such projects were exempt from the act. To avoid possible hardship to parties who have relied on permits thus issued, we are asked to make our decision prospective only.

We see no need for such a drastic step. In the minority of cases in which impact reports should have been prepared, the appropriate statutes of limitations will govern. As noted herein (p. 268, *ante*), the Mono County Zoning Ordinance declares a 30-day statute of limitations for seeking judicial review of a decision of defendant Board. If this provision is typical of such ordinances, very few if any of the projects approved during the 22-month period in question will still be subject to attack. And if a substantially longer statute of limitations is provided in any case, similar protection may be afforded by invoking the doctrine of laches.

We are also asked to stay the effective date of our decision in order to allow additional time, inter alia, for governmental agencies to draw up guidelines and develop procedures for applying the EQA to private projects as defined herein. Again we perceive no real necessity for such a departure from normal practice. In extraordinary circumstances we have authorized a delay in the effectiveness of a decision of this court when its immediate implementation would have been virtually impossible. (See, e.g., *Young* v. *Gnoss* (1972) 7 Cal.3d 18, 28 [101 Cal. Rptr. 533, 496 P.2d 445]; *Serrano* v. *Priest* (1971) 5 Cal.3d 584, 618-619 [96 Cal. Rptr. 601, 487 P.2d 1241].) For the reasons given above, however, we expect that the majority of the private projects for which governmental approval will be sought in the future will present no risk of significant environmental effect and therefore will not require impact reports in any event. With respect to the remainder, we point out that the EQA has been in effect since November 23, 1970. and
273 many of the questions here raised as to the method of complying *273 with the act in the case of private projects could also have arisen during the past 22 months in the case of public projects. We must therefore presume that governmental agencies charged with responsibilities under the act have been performing their duties (Civ. Code, § 3548) and can now draw upon their planning and experience in the public sector to aid in solving whatever problems they may have in the private sector. To the extent such planning and experience prove inadequate to the task at hand, we do not doubt that with the good will and cooperation of all concerned appropriate new guidelines and procedures can be promptly devised.

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

**State of California**

**PUBLIC RESOURCES CODE**

**Section 21082.4**

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21082.4. In describing and evaluating a project in an environmental review document prepared pursuant to this division, the lead agency may consider specific economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of a proposed project and the negative impacts of denying the project. Any benefits or negative impacts considered pursuant to this section shall be based on substantial evidence in light of the whole record.

(Added by Stats. 2018, Ch. 193, Sec. 1. (AB 2782) Effective January 1, 2019.)

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

**State of California**

**PUBLIC RESOURCES CODE**

**Section 21083**

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21083. (a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the environment" if one or more of the following conditions exist:

(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, "cumulatively considerable" means that the incremental effects of an individual 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.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(c) The guidelines shall include procedures for determining the lead agency pursuant to Section 21165.

(d) The guidelines shall include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that a draft environmental impact report, a proposed negative declaration, or a proposed mitigated negative declaration shall be submitted to appropriate state agencies, through the State Clearinghouse, for review and comment prior to completion of the environmental impact report, negative declaration, or mitigated negative declaration.

(e) The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(f) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to this section and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines may not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(Amended by Stats. 2004, Ch. 689, Sec. 1. Effective January 1, 2005.)

STATE OF CALIFORNIA
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**State of California**

**PUBLIC RESOURCES CODE**

**Section 21159.23**

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21159.23. (a) This division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of 100 or fewer that is affordable to low-income households if both of the following criteria are met:

(1) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households, as defined in Section 50079.5 of the Health and Safety Code, for a period of at least 30 years, at monthly housing costs, as determined pursuant to Section 50053 of the Health and Safety Code.

(2) The development project meets all of the following requirements:

(A) The project satisfies the criteria described in Section 21159.21.

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

(i) Has been previously developed for qualified urban uses.

(ii) The parcels immediately adjacent to the site are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses and no parcel within the site has been created within 10 years prior to the proposed development of the site.

(C) The project site is not more than five acres in area.

(D) The project site is located within an urbanized areaor within a census-defined place with a population density of at least 5,000 persons per square mile or, if the project consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(b) Notwithstanding subdivision (a), if a project satisfies all of the criteria described in subdivision (a) except subparagraph (D) of paragraph (2) of that subdivision, this division does not apply to the project if the project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (b), this division applies to a project that meets the criteria of subdivision (b), if there is a reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(d) For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

(Added by Stats. 2002, Ch. 1039, Sec. 12. Effective January 1, 2003.)

STATE OF CALIFORNIA
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

**State of California**

**PUBLIC RESOURCES CODE**

**Section 21159.21**

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21159.21. A housing project qualifies for an exemption from this division pursuant to Section 21159.22, 21159.23, or 21159.24 if it meets the criteria in the applicable section and all of the following criteria:

(a) The project is consistent with any applicable general plan, specific plan, and local coastal program, including any mitigation measures required by a plan or program, as that plan or program existed on the date that the application was deemed complete and with any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(b) Community-level environmental review has been adopted or certified.

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

(d) The site of the project does not contain wetlands, does not have any value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. For the purposes of this subdivision, "wetlands" has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and "wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1.

(h) The project site is not subject to any of the following:

(1) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(2) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(3) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(5) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(i) (1) The project site is not located on developed open space.

(2) For the purposes of this subdivision, "developed open space" means land that meets all of the following criteria:

(A) Is publicly owned, or financed in whole or in part by public funds.

(B) Is generally open to, and available for use by, the public.

(C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(3) For the purposes of this subdivision, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(j) The project site is not located within the boundaries of a state conservancy.

(Amended by Stats. 2012, Ch. 39, Sec. 96. (SB 1018) Effective June 27, 2012.)

**§ 15064.3. Determining the Significance of Transportation Impacts.**
14 CA ADC § 15064.3
Barclays Official California Code of Regulations

Barclays California Code of Regulations
Title 14. Natural Resources
Division 6. Resources Agency
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act (Refs & Annos)
Article 5. Preliminary Review of Projects and Conduct of Initial Study

14 CCR § 15064.3

# § 15064.3. Determining the Significance of Transportation Impacts.

Currentness

(a) Purpose.

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

(b) Criteria for Analyzing Transportation Impacts.

(1) Land Use Projects. Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be presumed to have a less than significant transportation impact.

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

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

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

(c) Applicability.

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

## Credits

NOTE: Authority cited: Sections 21083 and 21099, Public Resources Code. Reference: Sections 21099 and 21100, Public Resources Code; *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256; *California Clean Energy Committee v. City of Woodland* (2014)

225 Cal. App. 4th 173.

HISTORY

1. New section filed 12-28-2018; operative 12-28-2018 pursuant to Government Code section 11343.4(b)(3) (Register 2018, No. 52).

This database is current through 1/20/23 Register 2023, No. 3.

Cal. Admin. Code tit. 14, § 15064.3, 14 CA ADC § 15064.3

END OF DOCUMENT

AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

**State of California**

**PUBLIC RESOURCES CODE**

**Section 21099**

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

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

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

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

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

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

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

(7) "Transit priority area" means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program or applicable regional transportation plan.

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

(2) Upon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion, shall not be

considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any.

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

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

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

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

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

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

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

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

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

(Amended by Stats. 2019, Ch. 466, Sec. 5. (AB 1824) Effective January 1, 2020.)

RECEIVED
2023 FEB -7 AM 10: 04
CITY CLERK'S OFFICE
MANHATTAN BEACH, CA

February 7, 2023

Manhattan Beach City Council
1400 Highland Ave.
Manhattan Beach, CA 90266

RE: SUPPLEMENT TO REQUEST FOR RECONSIDERATION OF HIGHROSE EL PORTO PROJECT APPROVAL

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City Council,

I submitted a Request for Reconsideration of the Highrose Decision on February 6, 2023. In that request, I stated numerous times that the Lead Agency invoked an 'unspecified' statutory exemption. This is true, however, I subsequently learned the City filed a Notice of Exemption on January 23, 2023, declaring for the first time the Highrose El Porto Project is exempt for the specific statutory exemption 14 CCR § 15268, Ministerial Projects. The reason for exempt status is, "This project is a ministerial project." Section 15268(d) specifically defines ministerial actions that include discretionary decisions as discretionary projects.

Where a project involves elements of both ministerial and discretionary action, it is subject to CEQA. (Guidelines, § 15268, subd. (d); *Friends of Westwood, Inc.* v. *City of Los Angeles, supra,* 191 Cal. App.3d at p. 271 [observing principle that CEQA applies even where agency's role is largely ministerial].) As previously discussed, the Legislature intended CEQA to apply to discretionary projects, even when the agency's discretion to fully comply with CEQA is constrained by the substantive laws governing its actions.

Notwithstanding the Project was *eligible* for State density bonus entitlements pursuant to the SDBL, ministerial processing of housing applications pursuant to Housing Department Guidelines, are exclusively confined to objective standards of 1) zoning, 2) subdivision, and 3) design review (*see* Guidelines Section 1.02(n), Definitions). On March 29, 2022, the Project received ministerial approval from the Community Development Director, after she determined the Project was consistent with the General Plan, Local Coastal Program, Municipal Code, and State law. The Legislature has not created an express CEQA exemption for the State Density Bonus Law or the Housing Accountability Act. Approving the Highrose El Porto Project without conducting CEQA review is a violation of State law.

CEQA further provides in § 21004, "In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than CEQA. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law." This provision strongly

suggests the Legislature intended CEQA to apply to all public agencies undertaking discretionary projects and to the fullest extent possible, even if the agency's discretion to comply with all of CEQA's requirements may be constrained by the substantive provisions of the law governing the public agency

A *discretionary project* is one subject to "judgmental controls," i.e., where the agency can use its judgment in deciding whether and how to carry out the project. (Guidelines, § 15002, subd. (i); cf. *Friends of Westwood, Inc.* v. *City of Los Angeles*(1987) 191 Cal. App.3d 259, 271-273 [235 Cal. Rptr. 788] [distinguishing decisionmaking discretion subject to CEQA from "ministerial" activity that is not].)

If a public agency proposes to approve a discretionary project, the agency's activity may nonetheless be exempt from CEQA by legislative command. (See, e.g., § 21080, subd. (b) [exempting specific projects from CEQA]; see also §§ 21080.01-21080.03 [exempting from CEQA construction and maintenance of specified prison facilities]; see generally, *Napa Valley Wine Train, Inc.* v. *Public Utilities Com.* (1990) 50 Cal.3d 370, 376 [267 Cal. Rptr. 569, 787 P.2d 976].)

A "discretionary project" is defined as one "which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, [or] regulations." (CEQA Guidelines, § 15357.) (4) The "touchstone" for determining whether an agency is required to prepare an EIR is whether the agency could meaningfully address any environmental concerns that might be identified in the EIR: "As applied to private projects, the purpose of CEQA is to minimize the adverse effects of new construction on the environment. To serve this goal the act requires assessment of environmental consequences where government has the power through its regulatory powers to eliminate or mitigate one or more adverse environmental consequences a study could reveal. Thus the touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report.'" (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 933 [110 Cal.Rptr.3d 865] (*San Diego Navy*), quoting *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 266-267 [235 Cal.Rptr. 788] (*Friends of Westwood*).) "And when is government foreclosed from influencing the shape of the project? Only when a private party can legally compel approval without any changes in the design of its project which might alleviate adverse environmental consequences." (*Friends of Westwood,* at p. 267).

Whenever a project may have a significant and adverse physical effect on the environment, an EIR must be prepared and certified. (§ 21100, subd. (a); cf. *Bozung* v. *Local Agency Formation Com.* (1975) 13 Cal.3d 263, 277-279 [118 Cal. Rptr. 249, 529 P.2d 1017]; *City of Livermore* v. *Local Agency Formation Com.* (1986) 184 Cal. App.3d 531, 538 [230 Cal. Rptr. 867].)

An EIR provides the public and responsible government agencies with detailed information on the potential environmental consequences of an agency's proposed decision. (See generally, *No Oil, supra,* 13 Cal.3d at p. 81; *Sundstrom* v. *County of Mendocino* (1988) 202 Cal. App.3d 296, 307 [248 Cal. Rptr. 352].) The EIR describes ways to minimize significant environmental effects, and suggests alternatives to the project, including the option of "no project." (§ 21061; Laurel Heights, supra, 47 Cal.3d 390, 391; see also Guidelines, § 15126, subd. (d)(4) ["no project" alternative to be considered along with proposed project's environmental impact].)

In some cases, notwithstanding a public agency's determination that a proposed activity may have a significant, adverse effect on the environment, an EIR is not required. Certain state agencies, operating under their own regulatory programs, generate a plan or other environmental review document that serves as a functional equivalent of an EIR. (§ 21080.5, subd. (a); *Sierra Club, supra,* 7 Cal.4th at pp. 1229-1230; *Wildlife Alive* v. *Chickering* (1976) 18 Cal.3d 190, 196 [132 Cal. Rptr. 377, 553 P.2d 537] (hereafter *Wildlife Alive*); *Citizens for Non-Toxic Pest Control* v. *Department of Food & Agriculture* (1986) 187 Cal. App.3d 1575, 1584 [232 Cal. Rptr. 729] (hereafter *Citizens*).) Because the plan or document is generally narrower in scope than an EIR, environmental review can be completed more expeditiously. (See Note, *The Timber Harvest Plan Exemption from the California Environmental Quality Act: Due Process and Statutory Intent* (1990) 41 Hastings L.J. 727, 735.)

To qualify, the agency's regulatory program must be certified by the Secretary of the Resources Agency (Secretary). (§ 21080.5, subd. (e).) An agency operating pursuant to a certified regulatory program must comply with all of CEQA's other requirements. (*Sierra Club, supra,* 7 Cal.4th at pp. 1228, 1230-1231; *Mountain Lion Coalition* v. *Fish & Game Com.* (1989) 214 Cal. App.3d 1043, 1051 [263 Cal. Rptr. 104]; *City of Sacramentov. State Water Resources Control Bd.* (1992) 2 Cal. App.4th 960, 976-978 [3 Cal. Rptr.2d 643].)

CEQA Guidelines § 15183; PRC § 21083.3 – *Projects Consistent with Applicable Zoning and Planning* (Technical Bulletin, *Review of Housing Projects* (January 2020)

- The zoning, community plan, or general plan policies must have been approved based on a certified EIR and all agencies required to implement mitigation measures identified in the EIR have committed to undertake the measures.
- The lead agency should prepare an initial study or other analysis limited to determining whether any impacts:
    - ✓ are peculiar to the project or the parcel on which the project would be located;
    - ✓ were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent;
    - ✓ are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action; or

- ✓ are previously identified significant effects which, as are result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.
- The lead agency must hold a hearing and make findings that the feasible mitigation measures in the prior EIR will be implemented.
- An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

The broad delegation of power to streamline the permitting of low-income housing developments utilizing a ministerial review for zoning, subdivision, and design review considerations, as defined by the State's HAA and the SDBL, and applying that same ministerial standard to the discretionary standards applicable to CEQA review, hardly determines the extent to which the Legislature intended to have local agencies exercise exclusive powers to preempt concurrent state CEQA regulations. To the contrary, the HAA explicitly requires compliance with CEQA regulations (see Government Code § 65589.5(e)), and defines the meaning of "ministerial process" or "ministerial approval" as, "[T]he public official merely ensures that the proposed development meets all the "objective zoning standards," "objective subdivision standards," and "objective design review standards" in effect at the time that the application is submitted to the local government, but uses no special discretion or judgment in reaching a decision." (see Government Code § 65913.4).

The dichotomy between the Legislative intent of protecting the environment and streamlining a local agency's role in developing new housing projects, is not so sharp in practical terms as the legal characterizations advanced by the—City Attorney, Community Development Director, Planning Commissioner, and the Project Applicant––all make it out to be. The parties opposing the proposal to obtain a Precise Development Plan Permit to develop a multi-family housing complex with subterranean parking adjacent to an oil refinery, are concerned citizens who recognize the inherent dangers associated with exposing residential occupants to harmful toxins from commercial oil refining activities, and believe the law requires an EIR before the Project is allowed to move forward. "CEQA embodies a state policy adopted by the Legislature to govern how the state itself and the state's own subdivisions will exercise their responsibilities." (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677.).

Respectfully submitted,

Patrick Sharpless

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2023 FEB -7 AM 10: 04

CITY CLERK'S OFFICE
MANHATTAN BEACH, CA

February 7, 2023

Manhattan Beach City Council
1400 Highland Ave.
Manhattan Beach, CA 90266

RE: AGENDA, GENERAL BUSINESS, ITEM #10

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City Council,

As you give consideration of Police Department Staffing Levels and Authorization to Increase Permanent Staffing by Seven Additional Police Officers, One Police Support Supervisor, One Civilian Background Investigator, and Consideration of Enhanced Recruitment Incentives (Police Chief Johnson and Human Resources Director Jenkins), please consider the following information and establish clarity on the record before making a decision.

I commend Chief Johnson for her bold decision to make such a significant request for additional staff, and support her decision to do so. I hope to see City Council authorize Chief Johnson's request, but not before some details are established on the record to understand how the $1.5 million/year mid-year budget item will shake out.

Since the Police Department routinely reassigns Community Service Officers to conduct higher priority work—pulling them away from ordinary parking enforcement responsibilities, and reassigning them to assist sworn Police Officers with higher priority responsibilities—will this request for increased staff require a correspondingly increased number of CSO's to support the increased sworn Police Officer staff? If more CSO's are reassigned to support more department staff, does this mean Chief Johnson, H.R. Director Jenkins, and Finance Director Steve Charelian will be seeking an even higher annual budget than the $350,000/year that is currently being spent for LAZ Parking to issue citations for Vehicle Code parking violations? Conversely, does Chief Johnson's request for increased sworn officer staffing mean the new staff will provide sufficient support for high priority matters, thereby eliminating the need for CSO's to be reassigned to higher priority responsibilities? What are the adequate levels of parking enforcement needs? Do 12 CSO's satisfy that adequate level? If an adequate level of CSO's are available for discretionary parking enforcement responsibilities, does this mean taxpayers will no longer be required to pay a private contractor to issue citations for Vehicle Code parking violations?

It's not clear how a full-time civilian Background Investigator will move candidates quickly and efficiently through the background investigation process to expedite and streamline the hiring process, any differently than a contract background investigator does. Moreover, what happens when staffing levels are satisfactory and no background investigations are being conducted? Will this civilian Background Investigator be assigned to only conducting employee background investigations, or

will this civilian investigator be used for conducting other investigations? Since civilian employees aren't sworn police officers, it seems an in-house civilian Background Investigator could be improperly used to conduct unlawful investigations into anyone the agency wanted to target, like someone who was investigating the agency for unlawful activities.

What would happen if the City adopted an unlawful policy to enforce unregulated parking spaces, hired an unlawful contractor to issue citations for Vehicle Code parking violations, the issuing agency made findings unsupported by the evidence in the Initial Review, who then filed false documents in support of those unsupported findings, the issuing agency didn't have any written procedures for conducting administrative hearings, but used a conflicted hearing examiner to unfairly steer the outcome of the administrative hearing while impersonating the former hearing examiner whose contract already expired, then that conflicted hearing examiner who is impersonating a former contractor whose contract already expired, made findings unsupported by the evidence and filed false documents in support of those unsupported findings, and the innocent motorist who objected to being defrauded by the City's abuses of authority and violations of due process, and multiple criminal offenses, were to conduct his own investigation into the shady practices employed by the City? Would this civilian Background Investigator then be used to doxx the innocent citizen in retaliation for his investigation into the City's unlawful practices? What assurances do the taxpayers have that these civilian employees with broad authorities under confidentiality protections of the Police Department won't abuse those authorities for unlawful purposes? Will City Council's resolution authorizing such a position make clear the boundaries of authority for this civilian investigator?

Respectfully submitted,

Patrick Sharpless