Proposed CEQA Guidelines
SCAG
January 31, 2018

## Process in Updating the Guidelines

- Listening Tour (early 2011)
- Infill Streamlining Update (2012)
- Solicitation for Input (summer 2013)
- Possible Topics and Preliminary Evaluation (winter 2013)
- Preliminary Draft of VMT Update (August 2014)
- Draft of Comprehensive Update (August 2015)
- Revised VMT Update (January 2016)
- Proposed Comprehensive Package (November 2017)
- Resources Agency's Notice of Proposed Rulemaking (January 2018)

2

## What is part of the proposed update?

| Process Improvements | Substance Improvements | Technical Improvements |
|---|---|---|
| • Regulatory Standards and Thresholds<br>• Program EIR scope<br>• TOD Exemption<br>• Appendix G rewrite<br>• Remedies and Remand | • Energy Impacts<br>• Water Supply<br>• Transportation (SB 743)<br>• Greenhouse Gases | • Baseline<br>• Deferral of Mitigation Details<br>• Responses to Comment<br>• Consideration of Significant Effects and Hazards |

* This is a partial list of proposed updates.

3

## Regulatory Standards – Sections 15064 and 15064.7

- **Determining Significance - § 15064**
  - **Agencies may rely on thresholds and should support the significance determination with substantial evidence**
  - **Despite compliance with thresholds, agencies must still consider whether an impact may be significant**
- **Thresholds of Significance – § 15064.7**
  - **Can use environments standards as thresholds**
  - **Define "environmental standard"**

4

## Scope of Program EIRs – Section 15168

- "Within the scope" is a question of fact; agency makes this determination based on substantial evidence
- Addition of a non-exhaustive list of factors that may help an agency determine whether a later activity is within the scope of a program EIR
- Clarifies that even if a project is not within the scope of a program EIR, the agency may still streamline the later analysis by tiering as provided in Section 15152

5

## Energy Analysis – Section 15126.2(b)

- Current = Appendix F
- New § 15126.2(b) and Appendix G Questions
  - Analyze project energy use if project may result in significant impacts due to wasteful, inefficient, or unnecessary energy consumption
  - Analysis should include energy use for all project phases and include transportation-related energy
  - Relevant considerations = project size, location, etc.
  - Analysis is subject to rule of reason; focus on project's energy demand

6

# Appendix G

Appendix G contains a sample initial study format that can be tailored to address local conditions and project characteristics

Proposed changes include:

- Remove redundant questions and consolidate questions
- Update to be consistent with case law
- Add new questions related to:
  - Energy (Appendix F)
  - Transportation/VMT (SB 743)
  - Wildfire (SB 1241)
- Relocate questions regarding paleontological resources (AB 52)



# Transportation

- Current = LOS
- Senate Bill 743 (Steinberg, 2013)
  - Directs OPR to propose updates the CEQA Guidelines
  - Criteria must promote: GHG reduction, diversity of land uses, multimodal transportation systems
  - Congestion ≠ *environmental* impact

## Significance of Transportation Impacts – Section 15064.3 (SB 743)

- **VMT** is the primary metric
- Land use projects:
  - Presumption of less than significant if development near transit or if project reduces VMT
- Transportation projects:
  - Presumption of less than significant for VMT reducing projects
- If existing models or methods are not available, agencies may analyze project VMT qualitatively
- Lead agency discretion in choosing appropriate methodology
- Agencies will have an opt-in period to prepare for the transition; statewide application beginning Jan. 1, 2020

9

## GHG Emissions – Section 15064.4

- Proposed changes reflect recent case law (*Newhall Ranch, SANDAG*)
- Clarifies that when determining significance, the focus should be on the project's reasonably foreseeable incremental contribution to the effects of climate change in a time frame appropriate for the project
- Analysis must reflect evolving scientific knowledge and state regulatory schemes (*SANDAG*)
- Agency may consider consistency with State's long-term climate goals and strategies, provided substantial evidence supports how the goals and strategies address the incremental contribution to climate change (*Newhall*)

10

## Baseline – Section 15125

- General rule: existing conditions are normally the baseline existing at NOP publication or when analysis begins
- Agencies may look at historic conditions supported by substantial evidence where existing conditions fluctuate
- Exception: alternative baseline
  - *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439
  - Agency may describe both existing and future conditions as baseline
  - Alternative baseline may be the sole baseline when "use of existing conditions would be either misleading or without informative value to decision-makers and the public"; must be supported by reliable projections based on substantial evidence
- Agencies cannot use hypothetical baseline



## Deferral of Mitigation – Section 15126.4

- Agency "shall" not defer mitigation
- Clarifying situations when deferral of specific details of mitigation may be permissible – impractical or infeasible and the agency:
  - Commits itself to the mitigation
  - Adopts performance standards, and
  - Lists potential mitigation measures
- Deferral may be permissible where another agency issues a permit and is expected to impose mitigation outside of CEQA

## Hazards – Section 15126.2(a)

- Clarifications implement *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369
- Clarifies that the focus of CEQA analysis is on the project's effects on the environment; analysis must *also* discuss existing hazards the project might make worse
- Agency should consider direct, indirect, and cumulative impacts in locating development in areas susceptible to hazardous conditions



## Proposed CEQA Guidelines – Process Moving Forward

OPR submitted proposed updates to CEQA Guidelines to Resources Agency

(November 2017)

Formal rulemaking and public review period started

(January 2018)

OAL reviews the Guidelines package

Thank You!
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15