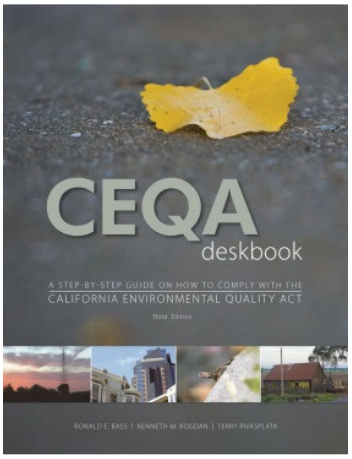

2013 Addendum
to
CEQA Deskbook, 3rd edition

This Addendum updates CEQA Deskbook, 3rd edition to include legislation and key court decisions on CEQA from 2013, including the California Supreme Court's Neighbors for Smart Rail decision on baseline.

Changes and/or additions affect the following pages:

Page 74 - 76

Page 103

Page 111 - 112

Page 139

Page 145

Page 202

CEQA Deskbook, 3rd edition
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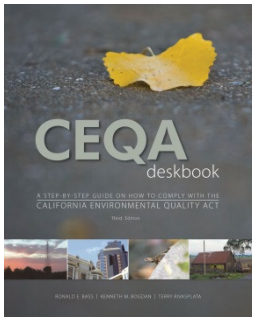

2013 Addendum

to

CEQA Deskbook,

3rd edition

The following replaces the discussion of "Baseline" beginning with the third paragraph on page 74 and ending on page 76.

[insert after the paragraph beginning with "A particularly contentious issue…"]

In 2013, the California Supreme Court handed down its second baseline decision when it decided *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (57 Cal.4th 439). This decision has clarified that, under certain circumstances, a baseline may reflect future, rather than existing, conditions.

The Sixth Circuit Court of Appeal's decision in *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351 ("Sunnyvale"), upset the world of transportation analysis under CEQA. Until that time, the analysis of the traffic and transportation impacts of a project commonly relied upon some future date as the baseline for analysis, because this was the norm in the world of transportation planning. This meant that, in contrast to most CEQA analyses, the traffic changes resulting from the project were based on a comparison of "future-with-project" and "future-without-project" scenarios.

Transportation-minded CEQA practitioners asserted that traffic is different than most environmental considerations because existing conditions do not represent the level of traffic that will exist at the time the project becomes operational and ignores both expected road improvements that may reduce traffic congestion and expected new development that may increase it. In other words, using existing conditions as a baseline would be an artificial estimate of project impacts because the physical conditions existing at the time of the NOP are certain to change over the time between when the project is approved and when it becomes operational.

The *Sunnyvale West* decision held that while comparisons to future traffic scenarios may be important for transportation planning purposes (and appropriate in determining the cumulative impacts of the proposed action), without substantial evidence to the contrary, CEQA mandates that only the physical conditions existing at the beginning of the environmental review process should be used as the baseline for determining the direct and indirect

impacts of a proposed project. The Court did provide that the date of project approval, as opposed to the date of issuance of the NOP, might be an appropriate baseline, rather than strictly adhering to the date of the NOP, especially when several years might pass between the NOP and project approval.

The *Sunnyvale West* ruling brought into question the long-established practice of using a future without –project baseline for traffic analysis. Rather than being able to rely upon a comparison of future-without-project and future-with-project conditions, both of which could be modeled using available software, the analysis now seemed to be reduced to comparing existing conditions (as often defined by traffic counts) to a future with-project scenario. The *Sunnyvale West* holding was reaffirmed by the Fifth District Court of Appeal in *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48. That decision invalidated a specific plan in part because the court could not find clear evidence that the County had actually used existing traffic as the baseline for determining the significance of the plan's traffic impacts.

The Second District Court of Appeal upset the proverbial apple cart with its 2012 decision validating the Exposition Metro Line Construction Authority's EIR for an extension of a Metro Line wherein projected conditions in the year 2030 were used as the baseline for traffic and traffic-related noise and air quality impacts. This decision created a clear split in the appellate courts' interpretation of the flexibility afforded to lead agencies in determining the baseline conditions from which to analyze the significance of a project's impact. On appeal, the Supreme Court agreed to consider the decision in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* and settle this split.

The Authority asserted that because the project is located in an area of rapid change, projections of traffic and air quality in the year 2030 (when the rail line would reach maximum ridership) offered a more realistic view of baseline conditions than did existing conditions. After reviewing the record, the Court disagreed, finding that there was no substantial evidence to support that assertion. It noted that "[t]he expectation of change may make it important for the agency to *also* examine impacts under future conditions (whether in the significant impacts analysis, the cumulative impacts analysis, or the discussion of the no project alternative), but it does not constitute substantial evidence supporting a determination that an existing conditions analysis would be uninformative or misleading." The Court looked at ridership as "a characteristic of the *project in operation*, not a characteristic of the *environmental baseline* against which project impacts are measured."

In its decision in *Neighbors for Smart Rail* the California Supreme Court has taken a step beyond its holding in *Communities for a Better Environment v. South Coast Air Quality Management District* that "[n]either CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency has the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence."

The Court has now effectively created a set of rules under which an agency may use a future baseline in place of existing conditions. Here they are:

- Existing conditions at the time of the Notice of Preparation or at the commencement of the CEQA process is normally the baseline for impact analysis.

- However, factual circumstances can justify an agency departing from that norm in the following circumstances, when such reasons are supported by substantial evidence:

    - When necessary to prevent misinforming or misleading the public and decision makers; and

    - When their use in place of existing conditions is justified by unusual aspects of the project or surrounding conditions.

- The *Sunnyvale West* approach was too restrictive and the Court of Appeal's reasoning in the case is disapproved insofar as it holds that an agency may never employ predicted future conditions as the sole baseline for analysis of a project's environmental impacts.

- An agency may, where appropriate, adopt a baseline that accounts for a major change in environmental conditions that is expected to occur before project implementation. Nothing in CEQA or the CEQA Guidelines precludes an agency from using as a baseline the conditions that are expected to exist at the time the proposed project would go into operation provided that agency explains the above conditions are satisfied.

- An agency has the discretion to completely omit an analysis of impacts on existing conditions in favor of a future conditions baseline when an existing conditions analysis "would detract from an EIR's effectiveness as an informational document, either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public." However, the fact that the future conditions analysis would be more informative is insufficient grounds by itself to omit an existing conditions baseline.

- The fact that a project could improve conditions in the long term does not relieve an EIR of its responsibility to inform decision makers and the public of the short- and medium-term environmental impacts of achieving that desirable improvement. These impacts include not only construction impacts, but also impacts incurred during the project's initial years of operation. The choice to use a future baseline must be justified, even if the project is designed to alleviate adverse environmental conditions over the long term.

The Supreme Court has sanctioned a more reasonable approach to baseline than in *Sunnyvale West*, with the caveat that there must be specific reasons to justify using a future baseline and that those reasons must be explained in the EIR and supported by substantial evidence. Use of future conditions as the sole baseline for impact analysis is limited to those situations where there are

"unusual aspects of the project or the surrounding conditions" that justify omitting an existing conditions analysis *and* when "inclusion of such an analysis would detract from an EIR's effectiveness as an informational document, either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public." The EIR must include substantial evidence that these conditions exist in order to support the lead agency's decision to rely on a future baseline. This decision should make jurisdictions more comfortable in using projections of conditions on opening day or the commencement of operations as a baseline in place of existing conditions.

It also allows agencies to examine potential impacts on the basis of both existing conditions and future projection baselines, if they so desire. There may be situations where doing so improves the decision maker's and public's understanding of the project's significant impacts. This decision clearly allows an agency to use the approach of including both existing conditions and background conditions baselines in an EIR.

What the courts mean when they refer to an "existing conditions analysis" is actually an analysis of the difference between existing conditions and existing conditions *plus the project*. This is what had raised such concern among transportation analysts over the *Sunnyvale West* decision. When a project will not begin operations until several years after the environmental process is done, an existing plus project conditions analysis does not accurately reflect the conditions that exist at the time the project's impacts actually occur. Thus, an existing plus project conditions analysis can be misleading to the public and decision makers. The Supreme Court has clarified that existing conditions do not have to be the baseline in such situations.

The Supreme Court has recognized that there is a difference between baseline, no-project alternative, and cumulative impact analyses. An EIR must include an analysis of the impacts in each of these cases. These three analyses can be characterized as follows:

- Baseline: Existing and/or, when justified, future conditions. This provides the public and decision makers an understanding of the current character of conditions. The EIR must analyze the changes from baseline that would occur should the project be approved. ICF recommends that an EIR should disclose existing conditions even when the future condition is justifiably used as baseline, as a point of information.

- Interim year impacts: If a project is phased or there is a substantial passage of time between initial operation and full operation, an EIR may need to analyze multiple timeframes in order to capture both interim and ultimate impacts.

- No-Project: Future conditions based on a reasonable projection of planned activities. The EIR must analyze the changes from existing conditions that would occur as a result of a future without the project.

- Cumulative Impact: Analysis of the project's contribution to a cumulative significant impact resulting from past, present, and probably future actions and the determination of whether that contribution is "considerable."

Despite the Court's criticism of its approach, the Authority won this case on a technicality. Nonetheless, agencies should not emulate the Authority's approach of setting a far-future baseline just because there are available demographics and traffic projections to construct a far-future scenario. If a future baseline is used, it should be as close as possible to the time of project approval, while still allowing meaningful analysis of operational impacts.

Sidebar:

Recommendations When Using a Future Baseline

Show your work. This is always good advice, but this case highlights the need to clearly explain in the EIR why a future baseline is reasonable.

Be specific. The Supreme Court has set out the circumstances under which a future baseline can be justified. Describe in the EIR's discussion of baseline the specific unusual aspects of the project or surrounding conditions that justify using a future baseline. In addition, explain how a future baseline is necessary in order to prevent misinforming or misleading the public and decision makers. The description/explanation must be supported by substantial evidence in the record.

Keep it real. Don't use a future baseline that's many years beyond the date at which the project would begin operations. The more distant the baseline year, the more difficult it will be to justify. Explain why the projections that the future baseline relies on are indeed reliable.

Avoid a Mid-life Crisis. When a future baseline is beyond the beginning of operations, the EIR must examine the impacts, if any, which would occur during the middle period between the beginning of operations and the future baseline year. The EIR should disclose whether such impacts are significant and include appropriate mitigation measures.

Be Cool. Using an existing conditions baseline is still warranted in most cases. The Supreme Court, in creating this unusual aspects of the project/misleading information rule, is establishing an approach that is only applicable under narrow circumstances. Don't get carried away and attempt to apply this approach to every impact analysis.

The following updates the discussion of Redevelopment Projects on page 103.

The State has dissolved all of the redevelopment agencies. As a result, the discussion of Redevelopment Project EIRs is no longer pertinent. With the demise of redevelopment, there will be no new EIRs for redevelopment projects.

The following new discussions are to follow the discussion of Redevelopment Projects on page 103.

Residential Project Consistent with a Specific Plan

Government Code Section 65457 creates a statutory exemption from CEQA review for residential developments that are "consistent with a specific plan for which an environmental impact report has been certified." If the specific plan EIR is subject to any of the conditions under Guidelines Section 15162 that would require preparation of a subsequent EIR, then this exemption would not apply until the subsequent EIR has been certified. (*Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301)

Developments Within Specific Plans in Transit Priority Areas

Public Resources Section 21155.4 establishes a statutory exemption for a residential, employment center, or mixed-use development project, including any subdivision or zoning change, that meets all of the following criteria:

- The project is proposed within a transit priority area.
- The project is undertaken to implement and is consistent with a specific plan for which an EIR has been certified.
- The project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either an approved sustainable communities strategy or an alternative planning strategy.

Further environmental review shall be conducted only if any of the events specified in Section 21166 (subsequent EIR section) have occurred.

Insert the following before Senate Bill 226 on page 111.

Senate Bill 743

Senate Bill (SB) 743 (Chapter 386, Statutes of 2013) is a further jazz riff from the concept of providing streamlined procedures for transit oriented projects. Its promise of eliminating the use of "level of service" as the traffic metric for infill, transit-oriented projects is enticing.

SB 743 adds a new chapter to CEQA for Modernization of Transportation Analysis for Transit-Oriented Infill Projects, beginning with Public Resources Code Section 21099. "Infill site" is defined as "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." "Transit priority area" is defined as "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 [four year] planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations."

OPR and the Natural Resources Agency are directed to amend the CEQA Guidelines to establish criteria for determining the significance of the transportation impacts of projects in transit priority areas (they are busily working on this in 2014). The criteria are to promote: the reduction of greenhouse gas emissions; development of multimodal transportation networks; and "a diversity of land uses." Specifically moving away from LOS as a measure of traffic impact, SB 743 directs the criteria to include metrics that include: vehicle miles travelled, vehicle miles travelled per capita, automobile trip generation rates, or automobile trips generated. OPR may also develop criteria for transportation models to be used to determine significance.

The statute provides that upon adoption of these Guidelines amendments, "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 [CEQA], except in locations specifically identified in the guidelines, if any." SB 743 further states that the adequacy of parking for a project shall not support a finding of significance.

SB 743 distinguishes other traffic-related impacts from its streamlining provisions, stating that this limitation "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." At the same time, SB 743 states that this does not preclude the application of locally adopted general plan policies, zoning, conditions of approval, or thresholds of significance that may be more protective of the environment.

In addition to the above criteria, Section 21099(c) allows the Guidelines amendments to include "alternative metrics" for transportation impacts outside of transit priority areas that may include traffic levels of service.

New Section 21099(d) states that aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area are not to be considered significant environmental impacts. It reserves the lead agency's right to consider aesthetic impacts under a local design review ordinance "or other discretionary powers."

These provisions will be fleshed out by OPR and the Natural Resources Agency in Guidelines amendments that are expected to be adopted in 2015.

The following replaces the discussion of Senate Bill 226 on pages 111 and 112.

Senate Bill 226

SB 226 of 2011 has created a new method for streamlining the CEQA analysis of qualifying infill projects where a prior EIR has been certified for a planning-level action (Public Resources Code Section 21094.5). Effective January 1, 2013, the CEQA Guidelines now include a concise discussion of this method (Guidelines Section 15183.3), the related statewide performance standards (Appendix M), and a new model checklist for evaluating qualifying projects (Appendix N). The purpose of SB 226 is to reduce the need for additional CEQA review for infill projects whose impacts were addressed as a significant impact in a prior EIR certified for a planning-level decision such as the adoption or amendment of a general plan, specific plan, or zoning ordinance.

As explained in the Natural Resources Agency's initial statement of reasons for adoption of Section 15183.3, streamlining under SB 226 is not "tiering."

> "Unlike CEQA's tiering provisions, for example, Section 15183.3 does not require a later EIR to analyze previously identified significant and unavoidable impacts. Further, also unlike tiering, which only limits the content of future EIRs, Section 15183.3 limits the application of CEQA altogether. Thus, Section 15183.3 does not require lead agencies to adopt new statements of overriding considerations to address previously identified significant effects."

Experienced CEQA practitioners will notice that this approach bears certain similarities to the long-standing statute that limits the review of projects that are consistent with a general plan, community plan and zoning decision to those issues that were not analyzed as significant impacts in the EIR certified for that prior decision or that are peculiar to the project or its site (Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183). The Legislature modeled Section 21094.5 on this existing statute, with new features intended to encourage the streamlined approval of projects that are consistent with a SB 375-compliant Regional Transportation Plan and that that comply with applicable local development policies and standards. Section 21094.5 also requires qualifying projects to conform to statewide performance standards established in the CEQA Guidelines.

An important provision in Guidelines Section 15183.3(d) is that "[d]eterminations [] are questions of fact to be resolved by the lead agency" and therefore are not subject to the fair argument standard. The Natural Resources Agency's initial statement of reasons points out that: "Section 21094.5 does not contain any language similar to Section 21151 (i.e., 'may') that would suggest that those determinations are questions of law." Clarifying that the fair argument standard does not apply reduces the chances that such determinations can be successfully challenged in court, encouraging the use of this option.

Limits on Required Review

Section 15183.3 limits the review of a qualifying project's impacts to those that:

- are specific to the project or to the project site and were not addressed as significant impacts in the prior EIR or
- substantial new information shows the impacts will be more significant than described in the prior EIR

The above project impacts do not require further analysis if uniformly applicable development policies or standards adopted by a city, county, or lead agency would apply to the project and substantially mitigate the impact. The lead agency is required to make a finding, based upon substantial evidence, that the development policies or standards will substantially mitigate that impact.

Under Section 15183.3(d)(1), the lead agency should prepare a checklist documenting the substantial evidence that supports its determinations regarding project impacts. Appendix N provides a sample checklist. Depending upon whether or not the project would have a new specific impact or a more significant impact, and the ability of adopted uniformly applicable development policies or standards to substantially mitigate any new or more significant impacts, the lead agency may either:

- rely on the prior EIR
- prepare a negative declaration,
- prepare a mitigated negative declaration,
- prepare a sustainable communities environmental assessment (as described in Public Resources Code Section 21155.2), or
- prepare an infill EIR.

More Significant Effect

Section 15183.3 states that "'more significant" means that an effect [i.e., impact] will be substantially more severe than described in the prior EIR. When determining whether a project may have a more significant effect, the lead agency will need to address each of the following concerns. More significant effects include those that result from changes in circumstances or changes in the development assumptions underlying the prior EIR's analysis. An effect is also more significant if substantial new information shows that: (1) mitigation measures that were previously rejected as infeasible are in fact feasible, and such measures are not included in the project; (2) feasible mitigation measures considerably different than those previously analyzed could substantially reduce a significant effect described in the prior EIR, but such measures are not included in the project; or (3) an applicable mitigation measure was adopted in connection with a planning level decision, but the lead agency determines that it is not feasible for the infill project to implement that measure."

Substantially Mitigate

For purposes of Section 15183.3, "substantially mitigate" means that the uniformly applied policy or standard will substantially lessen the impact, *but not necessarily below the level of significance*. The Natural Resources Agency explained in the initial statement of reasons for the Guidelines amendment why it interprets the statute in this way:

> "First, it clarifies that the phrase 'substantially mitigate' does not require that impacts be mitigated to a less than significant level. This clarification is necessary given arguments to the contrary by some observers pointing to CEQA's general rule requiring an EIR where a project's effects are significant. (See, e.g., Comments of Adams Broadwell Joseph & Cardozo, May 31, 2012.) Such an interpretation is not consistent with the plain language of Section 21094.5. Under Section 21094.5(a)(1), a less than significant effect would not trigger the requirement for additional review. If development policies had to reduce effects to a less than significant level, there would be no purpose of subdivision (a)(2).
>
> "More fundamentally, had the Legislature intended that such policies reduce effects to a less than significant level, it would not have used the word 'substantially' to modify the word 'mitigate.' Finally, in light of the other existing tiering and streamlining tools, the legislature's apparent intent in adopting Section 21094.5 was to create additional streamlining. In urban environments, it may not be possible to reduce some effects, such as construction noise and traffic, to less than significant levels. Interpreting the phrase 'substantially mitigate' to mean less than significant would frustrate the purpose of Section 21094.5(a)(2). Subdivision (d)(1)(E) [of section 15183.3], therefore, clarifies that development policies must meaningfully reduce significant effects in order to avoid further review, but need not reduce such effects to a less than significant level."

Uniformly Applicable Development Policies or Standards

This provision of SB 226 recognizes the important role that adopted standards and policies can play in reducing the significant impacts associated with development projects. Ideally, the preparation of an infill EIR can be avoided or the scope of that EIR narrowed as a result of the substantial mitigation provided by the policies or standards. The statute does not contain examples of uniformly applicable policies and standards, but Section 15183.3 offers the following:

- Regulations governing construction activities (i.e., noise ordinance, dust control, storm water control, etc.)
- Requirements in locally adopted building, grading, and storm water codes
- Design guidelines
- Requirements for protecting residents from air pollution sources such as high volume roadways and stationary sources
- Impact fee programs for public infrastructure and road improvements
- Requirements for reducing greenhouse gas emissions
- Ordinances that protect urban trees and historic resources

Infill EIR

This is a new type of EIR. Its scope is limited to impacts which are specific to the project or to the project site and that were not addressed as significant impacts in the prior EIR or that will be more significant than described in the prior EIR. The process for preparing an infill EIR is largely the same as for any EIR. The key difference is that an infill EIR must include a written checklist, such as the sample checklist in Appendix N, to be circulated for public review with the draft infill EIR. The purpose of the checklist and any supporting information is to document the extent to which there are new impacts or more significant impacts that must be analyzed in the infill EIR.

An infill EIR will analyze those significant impacts that uniformly applicable development policies do not substantially mitigate, and that are either new specific impacts or are more significant than the prior EIR analyzed. It does not need to analyze other impacts. If alternatives are analyzed, they need not include alternative locations, densities, or building intensities. Growth-inducing impacts need not be analyzed. (Section 15183.3(e)) Where uniformly applicable development policies or standards substantially mitigate the significant effects of an infill project, the lead agency shall also make a written finding, supported with substantial evidence. (Section 15183.3(d)(2)(C))

Qualifying Projects

The streamlining provided by Section 21083.3 only applies to infill projects where a prior EIR has been certified for "a planning level decision of a city or county." While this limits its applicability to EIRs for the "enactment or amendment of a general plan, community plan, specific plan, or zoning code," it does not limit its use to a city or county. Any lead agency that is considering a qualifying infill project could use Section 21083.3. In practice, however, a city or county is the most likely lead agency.

Infill Project

An infill project for purposes of Section 21083.3 is a project:

- Located within an urban area. Urban area is defined as either an incorporated city, or an unincorporated area that is completely surrounded by one or more incorporated cities where the population of the unincorporated area and the population of the surrounding incorporated cities equal a population of 100,000 or more and the population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.
- Located on a site that has been previously developed or on a vacant site where at least 75 percent of the perimeter adjoins or is separated only by an improved public right-of-way from parcels that are developed with qualified urban uses.
- Consisting of one or more of the following uses:
    - Residential
    - Retail or commercial, where no more than ½ of the project area is used for parking
    - A transit station
    - A school
    - A public office building

Additional Criteria

In addition, the project must satisfy one of the following requirements:

- Consistency with the general use designation, density, building intensity, and policies in either a sustainable communities strategy or alternative planning strategy of an RTP that has been sanctioned by the Air Resources Board. Although neither the statute nor the new Guideline require the project to be consistent with the general plan, community plan, specific plan, or zoning action for which the prior EIR was certified, comparing the infill project to the prior EIR will be easier when the infill project is consistent with the plan-level document.
- Is a small walkable community project as described in Section 15183.3(f)(6). A "small walkable community project" must be located in an incorporated city (counties are not eligible) that is outside the boundaries of a metropolitan planning organization (MPO). The small walkable community project must be designated by the city for that purpose and may be designated concurrently with project approval. A small walkable community must have the following characteristics:
    - The project area must consist of approximately ¼-mile diameter of contiguous land completely within the city's existing boundaries.
    - The project must include a residential area adjacent to a retail downtown area.
    - The project must have a density of at least 8 dwellings per acre or a floor area ratio for retail or commercial use of at least 0.5.
- Is located within the boundaries of an MPO that has not yet adopted a sustainable communities strategy or alternative planning strategy and the project has a residential density of at least 20 units per acre or a floor area ratio of at least 0.75.

Further, the infill project must satisfy all of the applicable statewide performance standards established by the CEQA Guidelines. The seven types of development that may qualify for SB 226 streamlining and their statewide performance standards are discussed below.

Statewide Performance Standards

Appendix M of the CEQA Guidelines describes the statewide performance standards in detail. There are two types of performance standards: those that must be implemented by all projects in order to qualify for streamlining and those limited by the project's land use. Where a project includes some combination of qualifying land uses, the performance standards that apply to the predominant use will govern the entire project. Following is a brief summary of the two types of statewide performance standards. The reader is directed to Appendix M of the CEQA Guidelines for more details.

Performance Standards Related to Project Design

The following design elements are required of *all projects* that otherwise qualify for streamlining under Section 15083.3. See Appendix M for more detail.

Renewable energy. All non-residential projects must include, and residential projects are encouraged to include, on-site renewable power generation (e.g., solar photovoltaic, solar thermal, wind power) or clean back-up power supplies, where feasible.

Soil and Water Remediation. A project located on a "Cortese list" hazardous materials site must document how the site has been remediated or it must implement the remediation recommendations presented in a preliminary endangerment assessment or comparable document.

Residential Units Near High-Volume Roadways and Stationary Sources. A project with residential units located within 500 feet of a high volume roadway or other significant source of air pollution must comply with any local policies and standards protecting the public health. If local government has not adopted such plans or policies, the project must include measures such as advanced air filtration that the lead agency finds will promote the protection of public health from those sources.

Performance Standards by Project Type

Appendix M sets out performance standards that apply to seven types of development projects.

Residential

A project must satisfy one of the following in order to be eligible for streamlining:

- Location in a "low vehicle travel area" within the region. A low vehicle travel area means a traffic analysis zone that exhibits a below average existing level of travel as determined using the regional travel demand model. This refers to either home-based or household vehicle miles traveled per capita.
- Location within ½ mile of an existing major transit stop or an existing stop along a high quality transit corridor. These stops must have transit service at intervals of 15 minutes or less during morning and afternoon peak commute periods.
- Comprise a residential or mixed use project consisting of 300 or fewer residential units all of which are affordable to low income households, with a 30-year affordability commitment.

Commercial/Retail

A project must satisfy one of the following in order to be eligible for streamlining:

- No single-building floor-plate exceeding 50,000 square feet, and located in a "low vehicle travel area" within the region. Travel refers to non-work attraction trips length (where this data is not available, reference either home-based or household vehicle miles traveled per capita).
- No single-building floor-plate exceeding 50,000 square feet, and located within a ½-mile radius of 1,800 households.

Office Building

A project must satisfy one of the following in order to be eligible for streamlining:

- Comprise a public or private office building located in a low vehicle travel area. Travel refers to commute attraction vehicle miles traveled per employee (where this data is not available, reference either home-based or household vehicle miles traveled per capita).
- Comprise a public or private office building located within ½-mile of an existing major transit stop or ¼-mile of an existing stop along a high quality transit corridor.

Transit

Any transit station is eligible.

Schools

The following schools are eligible. All schools must provide parking and storage for bicycles and scooters and comply with the school siting requirements established under Education Code Sections 17213, 17213.1, and 17213.2.

- Elementary school within 1 mile of 50 percent of the projected student population.
- Middle school or high school within 2 miles of 50 percent of the projected student population.
- Any school within ½ mile of an existing major transit stop or an existing stop along a high quality transit corridor.

Small Walkable Community Projects

Any small walkable community project, as defined above, is eligible.

Mixed-use Projects

A project that combines residential, commercial/retail, office building, transit station, and/or schools are subject to the performance standards listed above for the predominant use.

Applying the Streamlining Provisions: A Step-by-Step Approach

The sample checklist in Appendix N or a similar checklist is to be used to assist in answering the following questions. Determinations should be supported by substantial evidence in the record.

1. Is the project within an area for which a prior EIR was certified for a planning-level decision? If not, then Section 15183.3 does not apply.
2. Does the project qualify as an infill project as described in CEQA Guidelines Appendix M? If not, then Section 15183.3 does not apply.
3. Does the project meet all of the applicable statewide performance standards? If not, then Section 15183.3 does not apply.
4. Does the project have one or more project- or site-specific impacts that were not analyzed in the prior EIR or environmental impacts that are more significant than those described in the prior EIR?
    a. If no, then no further CEQA analysis is necessary and a Notice of Determination can be filed.
    b. If yes, then continue.

5. Would the new or more significant adverse impacts be substantially mitigated by a uniformly applicable development policy or standard?
    a. If yes, then no further review of that impact is required; the lead agency will make a written finding providing an explanation of the rationale for its determination.
    b. If no, then continue.
6. If the infill project would result in either a new specific impact or more significant adverse impact, or both, then CEQA will apply to the project. Here are the possible outcomes:
    a. If the new specific impact would be less than significant, then a negative declaration may be prepared.
    b. If the new specific effect or more significant adverse impact can be mitigated to a less than significant level, then a mitigated negative declaration may be prepared. Alternatively, if the infill project also qualifies as a transit priority project, then a sustainable communities environmental assessment may be prepared.
    c. If the new specific effect or more significant adverse impact would be potentially significant, then an infill EIR will be required. Its scope will be limited as described above. Findings and a statement of overriding considerations will be required for the potentially significant impacts analyzed in the infill EIR.

A Notice of Determination is required to be filed for any project approved based on one of these CEQA documents.

The following is to be inserted before the first full paragraph on page 139, under the discussion of Environmental Setting and Baseline:

[insert before the paragraph beginning with "If a project constitutes…"]

The Supreme Court has gone so far as to authorize including both existing conditions and background conditions (i.e., anticipated conditions at the opening day of the project) baselines in an EIR. However, an agency has the discretion to completely omit an analysis of impacts on existing conditions in favor of a future conditions baseline *only* when an existing conditions analysis "would detract from an EIR's effectiveness as an informational document, either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public." The agency is expected to provide substantial evidence to support this in its EIR. The fact that the future conditions analysis would be more informative is insufficient grounds by itself to omit an existing conditions baseline. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439)

The following is to be added to the end of the discussion of Impact of the Environment on Projects, page 145:

[insert before "Short- and Long-Term Impacts"]

The question of whether CEQA applies to impacts of the environment on a project is now before the California Supreme Court in the case of *California Building Industry Association v. Bay Area Air Quality Management District*. The issue to be heard will be limited to the following: "Under what circumstances, if any, does the California Environmental Quality Act (Pub. Resources Code Section 21000 et seq.) require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?" The outcome of this case will settle the matter.

The following is to be added to the discussion of Subsequent and Supplemental EIR, top of page 202:

[insert before the first full paragraph, beginning with "A subsequent or supplemental EIR is subject to…"]

The Supreme Court will hear the question of when a change in a project is substantial enough to qualify as a new project. In *Friends of the College of San Mateo Gardens v. San Mateo County Community College District*, the Court of Appeal held in an unpublished decision that the college's proposal to demolish rather than renovate a small building as part of its previously-approved plan to renovate the campus amounted to a new project. As a result, the addendum for the demolition was overturned. The Supreme Court will consider the extent to which Public Resources Code Section 21166 and the related CEQA Guidelines Sections 15162-15164 allow changes to previously approved projects to proceed under a subsequent environmental review.